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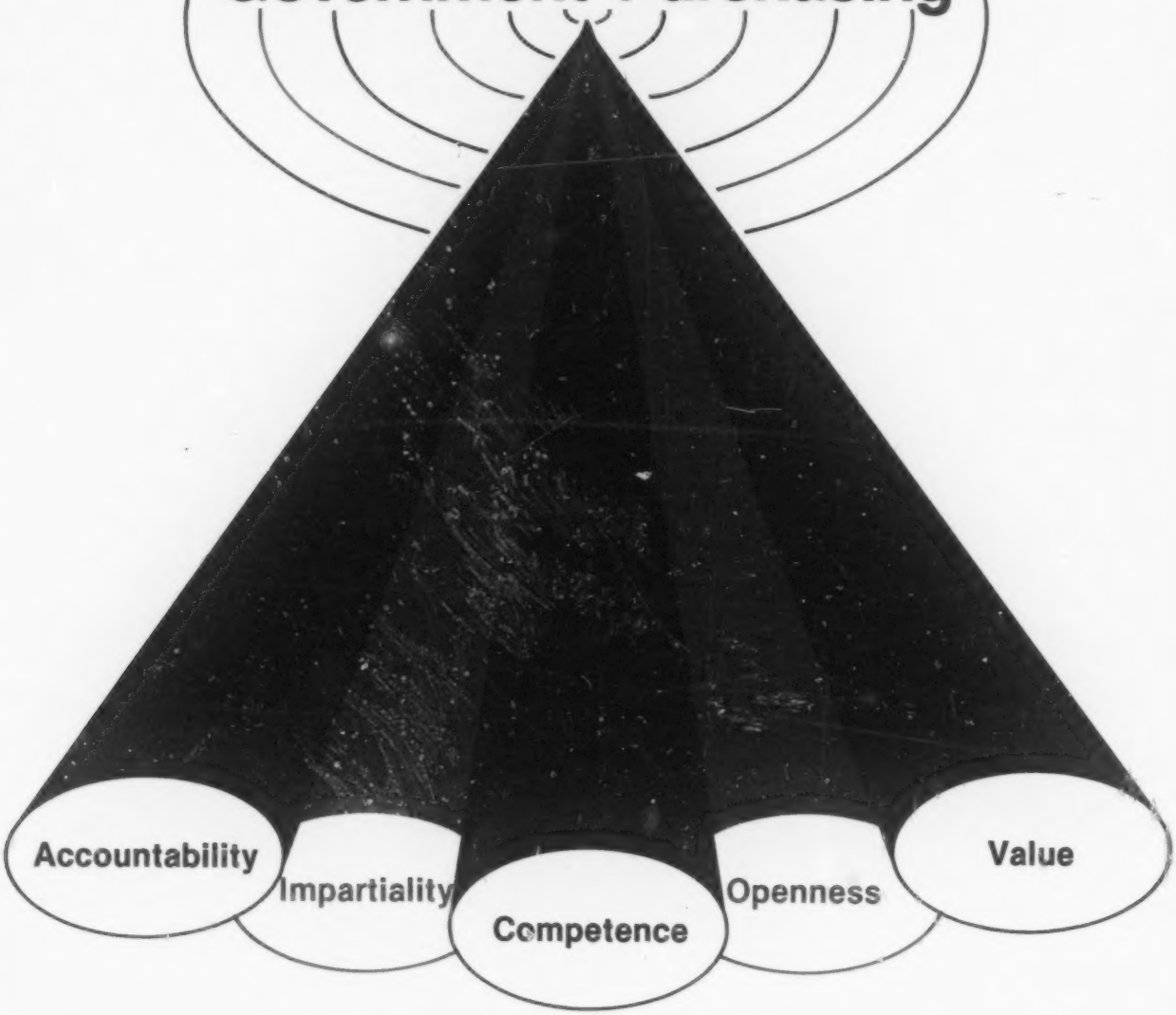
State and Local Government Purchasing



Second Edition

THE COUNCIL OF STATE GOVERNMENTS

The Council of State Governments

The Council is a joint agency of all the state governments—created, supported, and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

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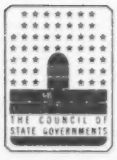

The Council of State Governments
National Association of State Purchasing Officials

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FOREWORD

The Council of State Governments has long recognized the importance of purchasing management to the processes of government. Purchasing is an essential service—essential by the nature of the work it performs and by the integral relationship of sound purchasing practices to credibility and reliability in the everyday activities of government.

This recognition goes beyond mere acknowledgement. The Council filled a void by publishing in 1969 the pioneer study *State Purchasing,* in 1975 the first comprehensive report on *State and Local Government Purchasing,* and in 1982 this second edition of the 1975 work.

The book will be highly useful to purchasing professionals. Equally important, it can be of similar, if less direct, value to the administration and management of public affairs through the understanding it can bring to elected and appointed officials and to program managers regarding the rôle of law and correct practice in the acquisition of goods and services.

At first glance, the unbiased decisions necessary to sound purchasing may appear out of place in a political system characterized by partisan support and participation. Office-holders find, however, that favoritism in contracting is a serious mistake. And in a time when many observers see a growing influence of special interests in the conduct of public affairs, it is perhaps of particular significance that public purchasing continuously seeks to affirm and strengthen its principles of objectivity and impartiality.

The Council is pleased to be able to make this book available to the public purchasing community and to officials at all levels. Its theme, clearly, is the public interest—more efficiency and greater confidence in government. The publication would not be possible, however, without the responsiveness of the 50 state purchasing officials, the cooperation of many National Institute of Governmental Purchasing members, and the Project Committee and Oversight Committee of the National Association of State Purchasing Officials.

Frank H. Bailey
Lexington, Kentucky
Executive Director
The Council of State Governments

PREFACE

The National Institute of Governmental Purchasing joins the National Association of State Purchasing Officials in welcoming this publication. It typifies the strong, continuing tradition of our organizations to engage in and foster research in the field of public purchasing and to pursue excellence in all aspects of the practice.

The work is timely in light of new and extended responsibilities, accompanied by more exacting expectations, that are being placed on state and local government contracting. The purchasing function is finding it must accentuate its duty to reduce costs of government by efforts to obtain optimum value for the tax dollar.

Both NASPO and NIGP participate actively in purchasing research, and since the 1950s they have spearheaded a number of studies through which state and local purchasing has been taking a critical look at itself. These inquiries contribute significantly to a better understanding of the problems and processes of public contracting, and they are augmented by an ongoing nationwide program of training seminars conducted by NIGP, accompanied by the examination and certification of career personnel.

The collective result of these endeavors is steady improvement in expertise and professionalism in the spending of public moneys. Yet, though virtually all states and many local governments have now attained some degree of central purchasing, none has achieved a fully integrated, operative system. In a very real sense we are still striving to realize the purposes and potential decribed by Russell Forbes in 1932 when he wrote for the Municipal Administrative Service that "centralized purchasing is the most economical and efficient method of procuring the supplies, materials and equipment needed to carry on the public service."

Acceleration of technological advances has exercised a pervasive influence on society and the economy since World War II. This treatise recognizes the continuing rapidity of these changes together with the insistence they bring to professional purchasing for new and better ways of evaluating comparative price/performance benefits among competing products. At the same time, it is necessary to remember that the precepts of public purchasing dictate that innovation be undertaken thoughtfully so it may prove farsighted, not disastrous.

In expanding and improving its services to the taxpayer, public purchasing will assume increased accountability. Knowledge, ability and the will to succeed must be characteristic of the purchasing manager who would produce the results demanded of the modern purchasing service. Correct understanding of public contracting principles will be the sine qua non of professional competence.

To these ends this book is written. We endorse it with enthusiasm and with gratitude to those who have made it possible, and we commend it to practitioners and non-practitioners alike as a handbook, a text, and a reference.

Lewis E. Spangler
Executive Vice President
National Institute of
Governmental Purchasing, Inc.

PROLOGUE

In 1961, the National Association of State Purchasing undertook two major projects. It designated a group of its members to develop and recommend a set of principles and practices in state purchasing, and it joined with the National Association of Attorneys General to identify and recommend ways to combat impediments to competitive bidding. Both tasks were completed in 1963.

These mileposts, in a very real sense, were the genesis of this publication, the latest in a series of commitments on the part of the Association to improve the quality and effectiveness of public purchasing.

State and local government purchasing finds itself changing in a number of respects. One is in refinement. When purchasing is viewed as an investment of funds, rather than a simple expenditure, cost reduction and ultimate economy become principal objectives. A second is in scope of procurement responsibility. In many jurisdictions, central purchasing is providing more expert handling of requirements previously left to individual agencies, such as rentals, leases, and many types of services, including those customarily defined as professional. Other areas of change and growth include added duties concerning inventory and supply management, employment of a variety of means of intergovernment purchasing cooperation, and more use of computer applications.

These changes coincide with the assumption by state and local governments of responsibilities for funding and administering programs that previously have been handled by the federal government. Together, the new and broadened activities combined with a continuously unstable marketplace bring about an increasingly complex environment, underscoring the need for strengthening the purchasing operation and for unified policy and management of the program.

This book shows that these changes and needs can be met and the foundations of public purchasing reinforced. There are certain basic distinctions between public contracting and purchasing by or for the private sector. Chief among them is that in private buying one can do whatever is not prohibited by law, whereas in public purchasing one can do only what is authorized by law. The discussion stresses that advancements and success in public purchasing depend heavily upon clear, realistic, and forward-looking law and policy, and the understanding and support of government leaders.

It also recognizes the high standards and skills necessary to carry out purchasing objectives. The book is instructional, yet purchasing remains an art. It is more learned than taught. A legal system and prescribed procedures afford necessary authority and guidance, but the level of results that purchasing achieves is determined in many ways by individual experience and performance.

The text provides its own summary in the form of essential elements of the purchasing function as they apply to law, rules and regulations, and good practices. In emphasizing essentials the discussion deals primarily with substantive matters. At the same time, it points to the necessity of certain procedures, as in requirements for documentation.

When a governmental program is successful, the ultimate benficiary is the citizenry. So it is with this book. In the final analysis, no matter how taxes are levied or who collects them, or how funds arrive in the public treasury, to the citizen they represent money that deserves to be spent prudently, honestly, and without favor.

The National Association of State Purchasing Officials is proud to add this thorough treatment of the subject to its contributions to governmental purchasing. It is the result of much dedicated effort, and the product symbolizes in an ideal way the purpose and aims of the Association's charter. We wish especially to express our deep appreciation to the many hours contributed to this project by the state and local government purchasers. I would like to recognize the commitment of the Project Committee, with special thanks to the expert leadership and drafting work of the project consultant, Willis Holding, Jr., and the long-time NASPO Research Committee Chairman, John Short. The Committee would have never accomplished its goals without the dedication of Joan Minton, who also contributed many personal hours to this project.

Darrell D. Perry
National Association of State
Purchasing Officials Secretary and
Director, Finance and
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The Council of State Governments

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NIGP Executive Vice President

1. Introduction

There is some difficulty in knowing just how to introduce the subject of purchasing. One reason for this is that it seems almost everyone believes he or she is an expert at it. Purchasing is among those things most of us feel able to do a little better than the other person. It is rather like pressing an elevator button correctly. You know the situation. You walk up and push the button and wait. Along comes a fellow and he knows you have pushed it, but he steps forward and pushes it a little better. Then behind him comes a lady who saw him do just that, but she feels she must improve on it with her own particular touch. And so it often continues.

Somewhat more complicated is turning a key in a stubborn lock. But who is there who doesn't feel frustrated while watching somebody else try it? And we stand there knowing—sometimes aloud—that we could do it better.

The public purchasing process is a great deal more complex. Yet purchasing agents are frequently reminded that there apparently are more experts outside the profession than in it. What follows in 16 chapters and several appendices is an effort to make the "experts" more expert and the practitioners more effective.

We begin with a profile of purchasing agents and the nature of their work.

First, purchasing professionals tend to be doubt-oriented; that is, they tend to question what is seen and heard. This is not to suggest they think everyone is trying to fool them, though there are times when things turn out so that they do feel rather foolish. But what is meant is that purchasing agents are searching for all sides. This attitude probably stems from having to work in the middle, between the opinions and desires of the person or agency which needs an item and the opinions and claims of the persons or firms striving to sell it. Even more particularly, it probably stems from the responsibility to make a final decision from among these opinions and desires and claims. The decisions have to be based on facts, judgment and law, and an abiding faith in the principle of applying fair play to economic competition.

In many respects, the work has judicial characteristics.

We like to think of a good purchasing agent as one who is diplomatic, tactful, and easy to work with. Other persons, however, may see him differently, and one of these is Dr. John C. Denton. As president of a business consulting firm, Dr. Denton wrote, "Some years ago I built a special personality test and validated it in a large purchasing department (53 buyers). The results indicated that the better purchasing agents were: a) aggressive, assertive, and influential, b) emotionally stable and well-controlled, c) not very sociable or outgoing, and d) not particularly cooperative or easy to deal with. At first glance, these results may seem unflattering to purchasing people, but certainly they are logically consistent with the functions buyers are required to perform, and they describe a good business manager."

From this, it looks as though revisions may be needed in purchasing job descriptions. On the other hand, perhaps it is advisable to continue to recruit nice, pleasant people, and trust the job itself will make them as disagreeable as they need to be.

Public purchasing has been undergoing considerable change over the past decade or so. In fact, the designation of purchasing agent itself is becoming obsolete. The modern concept is one of overall management of materials, and it involves continuous responsibilities from the inception of a requirement to its ultimate use and disposal. The emphasis in purchasing is changing from one of merely buying to one of control, with cost reduction as a prime objective. Industry caught the value of this some years ago when a national management group pointed out that a dollar saved by purchasing had the profit equivalent of $10 in sales. This realization has resulted in purchasing taking on a wide range of duties, including inventory management, value analysis, vendor evaluation, cost/price analyses, property use, and others. It has developed new tools, some of which can be formulated mathematically, such as economic order quantities. The dominant new physical device which is changing many purchasing routines and procedures, just as it is affecting other aspects of business activity, is electronic data processing.

Many of us think of competition as the sparkplug of the American economic system. In much the same sense, competition is the life force of public purchasing. There are several forms of competition intrinsically vital to purchasing. For example, there is competition of function, such as synthetic fibers versus natural fibers. There is product competition among different grades with a variety of performance capabilities. There is price competition. There is competition in rendering many kinds of services. There also are types of competition in which professional purchasing normally has no interest, such as competition between brand names, or for purposes of esteem, unless an item is being bought for display or resale.

Purchasing takes the view that a free enterprise system can function only when competition is free and open. In fact, it might be said that whatever opinions reasonable persons may hold on other matters of economics, public purchasing professionals are virtually unanimous in opposing all types of restrictions which adversely affect competition—whether such restrictions take the form of collusion, exclusive dealing, resale price maintenance, favoritism, monopoly, most-favored-customer pricing, closed specifications, reciprocity, preferential treatment, or government imposed price restraints.

Perhaps these characterizations suggest that purchasing is pretty much a combination of economics, applied engineering, law, and human relations. If so, the por-

trayal is essentially correct. All of these disciplines and skills are daily ingredients of an effective purchasing program.

It is important to emphasize that these necessary ingredients be kept in a proper balance. For example, the purchasing function can be over-engineered by drawing specifications so detailed and complex that it is almost impossible for the bidder to meet them, and equally impossible for the buyer to know whether they have been met. Economic considerations can be over-stressed, to the degree that prices are driven down to a level where the seller cannot realize an operational profit and loses incentive to be a good supplier, or to compete at all; or market fluctuations can be over-stressed with resultant inventory losses. Purchasing can be almost as easily over-legalized as under-legalized. Scarcely anything destroys the competitive spirit of a prospective bidder more than constructing a series of clauses that bind him into a legal knot.

The factor of human relations is often, and understandably, the most difficult area. Differing interests and wide variances of personalities are always at play between the sellers and the purchasing agents, the users and the sellers, and the purchasing agents and the users. It is among the very necessary responsibilities of public purchasing to encourage competitiveness by employing practicalities in specifications, realism in economics, good faith in legal considerations, and the highest professional ethics in personal relations.

Cost reduction is a fundamental objective of the purchasing effort, and accomplishing it weighs heavily on two points: better specifications and better buying. Developing better specifications calls for combining the knowledge and experience of users and purchasers, of manufacturers and sellers, and of technical specialists, who together can better outline needs and functions, beef up weak spots, trim off fat, define cost elements, and think in terms of realistic performance requirements which reliable suppliers can meet.

Better buying calls for another series of efforts: cutting out red tape and fine print, making the business more attractive by using terms and conditions which are fair and protect the interest of both buyer and seller, locating new sources of supply, devising ways of analyzing and comparing performance in relation to price, streamlining paper flow, opening lines of communication, requiring that obligations be met by seller and user alike, paying invoices promptly, and resisting to the limit any artificial or illegal restrictions imposed upon the market or price competition.

These two processes applied skillfully to almost any commodity or product area result in cost reduction.

All of this demands continuous and thoughtful hard work. Obviously, it is an assignment which is never completed. And it cannot be done successfully without good will and cooperation on the part of those who need and use the products, those who make and sell them, and the purchasing people who must effect and enforce the transactions. In this connection, it is important to remember that the final decision, and the responsibility to explain and defend it, rests with the central purchasing office.

This book seeks to survey, weigh, and recommend with respect to these diverse elements, and to distinguish a concept that can be called performance purchasing. This is an approach which endeavors to ascertain and contract for definite results, not merely hoped-for results. Some of its characteristics are emphasis on product differences as well as product similarities, and departure from writing detailed specifications and from routine use of the "or equal" type of specification. It tries to identify and focus more sharply upon overall costs, and this view fits the expectations modern management is placing on the purchasing function. When the purchasing contribution is measured by a different dimension, typical references are no longer impressive; the degree of performance is. No particular credit is bestowed by saying that a purchasing agent spends $5,000,000 a year, or $25,000,000 a year. But to say he or she achieved a 6 percent reduction in real costs the previous year is to compliment an outstanding achievement.

The idea of performance purchasing has many variations, degrees, and limitations in its application. For this reason, the idea requires not only understanding and imagination on the part of practitioners, it also offers new and interesting possibilities to the theorist.

2. Overview

The 1975 edition of *State and Local Government Purchasing* offered the first comprehensive research on the acquisition of goods and services by states and local jurisdictions. This new edition is intended to be more a textbook than a second study, although it is firmly rooted in updated research and surveys.

An important theme of this text is that state and local jurisdictions should, and in fact do, serve as laboratories of government. New ideas and different approaches can be tried by one or a few jurisdictions, and success attained, or error or failure tolerated, with a minimum of risk—from which others can learn. Although specific experiments are seldom planned and conducted with this in mind, communication through professional associations allows continuing and extensive purchasing experience to be gained and shared.

Dissimilarities among the states and their local governments, which facilitate their acting as natural laboratories, should be kept in mind when looking at or comparing statistical information produced by the surveys given in the Appendices and referred to in the text. At the same time, it is important to recognize that every purchasing program has strengths and weaknesses. These may be attributed variously to governing statutes, operating rules and regulations, quality of management, political traditions, and availability of resources. This book will discuss and make specific recommendations regarding statutes, rules, and management. It cannot speak to political traditions, which universally are unique. And it can only underline the importance of necessary resources.

An effective central purchasing program reduces the cost of government. It inspires public confidence in government. It directly improves the quality and timeliness of services rendered by program departments and agencies. It is the government's primary link to the business community. It promotes honesty and integrity throughout governmental operations. It is an ever-widening channel of intergovernmental cooperation. It is, indeed, a function which a government jurisdiction can ill-afford to undervalue.

This treatise can be viewed as a roadmap with effective central purchasing as the destination. It recommends essential elements for such a program, but it is not so detailed a blueprint that it limits ingenuity and innovation.

The text examines public contracting as it relates to the purchase, management, and disposition of equipment, materials, supplies, and services. It does not deal specifically with contracting for construction or other public works, including repairs or alterations, or with the acquisition of land or rights-of-way. Public works contracts in general, however, are subject to the same principles and procedures which apply to the purchase of other goods and services.

Need for an authoritative publication of this kind has developed steadily over the past decade. A variety of events of a national scope during that period have affected substantially the conduct of purchasing by state and local governments. The effect is a continuing one, some of it favorable, some adverse. Among the developments have been:

- A detailed study of the federal procurement system by the Commission on Government Procurement, 1969-1972. The Commission made 149 recommendations to the Congress for changes or revisions in the federal system.
- Positive reaction to the research during 1973-74, and publication, 1975, of the first edition of *State and Local Government Purchasing.*
- Numerous and varying conditions imposed on purchasing by the Congress and federal executive agencies as a part of federal grants administration, including revisions of "Attachment O" to the Office of Management and Budget Circulars A-102 and A-110 (formerly Bureau of the Budget Circulars A-102 and A-110 and Federal Management Circular 74) setting forth standards governing state and local grantee procurement in 1975-1979. Related directly to this are 1980 recommendations of a federal task group for further changes in "Attachment O."
- Establishment of an Office of Federal Procurement Policy in 1974.
- Development by the American Bar Association between 1975 and 1982 of a Model Procurement Code for State and Local Governments, Recommended Regulations for implementing the Model Code, and a proposed Model Procurement Ordinance for Local Governments.
- Intensified efforts by some industry groups since 1977 to discredit competitive bidding as a method for purchasing commercial products, with arguments that the established marketplace affords adequate competition and bidding is not needed.
- Creation of a Universal Public Purchasing Certification program by the National Institute for Governmental Purchasing and the National Association of State Purchasing Officials in 1978, and the projection that other professional purchasing associations will join the program.
- A large number of reports issued by the General Accounting Office concerning public procurement problems and suggested improvements, primarily regarding federal purchasing but including 1978 reviews of purchasing programs of selected state, county, and city jurisdictions.
- Adoption in 1981 of a new federal policy to increase "federalism" by calling on state and local governments to finance and administer programs previously handled by the federal government.

A further need for the book stems from growth in size and services rendered by government, especially at the state and local levels. This growth heightens interest in how moneys are spent. By 1980, expenditures through public contracting approached 20 percent of the gross national product, or approximately $500 billion annually, with some three-fifths of this representing state and local government purchasing.

Accompanying these developments and expansions is the need for well-thought-out policies as well as improved and refined purchasing techniques. The text is directed, therefore, not only to the purchasing professional, or to the student who would seek a career in public purchasing but also to the policy-maker and supporting staff—legislative, executive and administrative—at every level of a government jurisdiction.

The success of a public purchasing and contracting program rests in large part on sound design and effective implementation. Sound design includes a good conceptual base of statute law and a good structural framework of rules and regulations. Effective implementation requires sufficient resources in the form of adequate budget, competent personnel, and positive executive and legislative support, together with good management. The result is economy for the taxpayer and confidence in public officials. "Good purchasing is good government" is no idle aphorism.

The purpose of the text is to promote excellence in public purchasing, retaining that which does so and changing that which needs to be improved or viewed differently. This also was largely the purpose of the first edition, published in March 1975, and of the Model Procurement Code for State and Local Governments developed by the American Bar Association under a March 1975 grant from the Law Enforcement Assistance Administration and approved by the ABA in February 1979.

The March 1975 date common to these two endeavors is not accidental. The Law Enforcement Assistance Administration supplied basic funding necessary to both projects. It was widely expected that the Model Code would represent in statutory language the conclusions and recommendations produced by the preceding study. In confirmation of this, an announced purpose of the Model Code project was to "identify and synthesize the best elements of existing state procurement systems."

Unfortunately, these objectives were not altogether realized. Though state and local government purchasing personnel came to participate actively in the project, the background and knowledge of the majority of the initial and key drafters was limited almost exclusively to federal procedures, such that the philosophical base of the resultant code and recommended regulations is heavily attuned to federal procurement, especially as set forth in Armed Services and Federal Procurement Regulations (later the Defense and Federal Acquisition Regulations). Moreover, the experience of many of the early drafters lay in construction law, which also substantially influenced the Code.

This federal orientation is unfortunate because as Governor Richard A. Snelling of Vermont pointed out in testifying for the National Governors' Association before a U.S. subcommittee on Government Affairs in June 1981, "there are substantial differences between the federal procurement system and that of state governments." These differences concern both concepts and procedures in certain critical aspects of the purchasing function, such as evaluation criteria used effectively by states under competitive sealed bidding, which the Model Code does not recognize or adequately provide for.

The National Association of State Purchasing Officials and the National Institute for Governmental Purchasing strongly endorse the idea of a Model Code. There is much to commend in the work of the American Bar Association, even though it suffers from deficiencies, omissions, and, in terms of state and local government experience, errors. The elements of excellence for a purchasing system as presented in this book, therefore, in many respects will be consonant with the product of the American Bar Association, but in other respects will not be.

On a more positive note, the Model Procurement Code will have a salutary effect on governmental purchasing. For example, a quotation from the commentary in Article II identifies an important premise:

"A major conceptual basis of the Code, separation of policymaking and operational functions, is best achieved through the establishment of an independent policy body such as the State Procurement Policy Office suggested (in s. 2-101). The section provides for placement of the Policy Office either as an independent entity within the Executive Branch of the government or within an existing department of government such as General Services, Finance or Administration. Placement in the Executive Branch as a separate entity is the preferred arrangement,as it would further insure the professional integrity of this important policymaking body and appropriately elevate the entire procurement in the public sector."

A policy board is instrumental in reducing undue political and other outside influences on purchasing decisions. Also, it frees the operational segment of public purchasing from the role of rulemaking, helping to prevent conflicts of philosophy if not of interest. The authors of the Code were discerning in placing responsibility for purchasing duties and procedures in a central office and in underscoring this concept to a wide audience of government officials. Further, the Code provides improved understanding by these officials, and the public generally, of the principles of public contracting.

A recurrent theme throughout the Code is the requirement for more complete documentation at all points of the procurement process. This is advice which should claim the attention of all purchasing officials.

The Code also emphasizes the importance of price and cost analyses, and includes authorization to inspect con-

tractors' plants and records, two elements of public contracting that are frequently overlooked in purchasing law.

Overall, the American Bar Association Model Procurement Code is bringing about greater public appreciation and interest in the improvement of governmental purchasing, and for this the public purchasing community is deeply grateful.

An interesting event in 1979 concerning federal procurement gave added weight to a need for rewriting *State and Local Government Purchasing*. Wide public criticism arose over the growing practice of the Federal Supply Service of buying commerical products by setting up essentially non-competitive, negotiated price agreements called "multiple award schedules." Inquiry by the Congress resulted in a request to the Congressional Research Service, Library of Congress, to help find the best ideas and practices among state governments to determine if more efficient purchasing methods were being used, and to consider advantages and disadvantages of applying such state practices to the federal system.

The Council of State Governments and the National Association of State Purchasing Officials assisted the Congressional Research Service by conducting a survey and analysis of selected practices bearing largely on the question of how the 50 states purchase commercial products. A commercial product is considered as one designed and manufactured to the seller's specifications and offered generally in the marketplace, as contrasted to a custom product manufactured or altered to meet the design and specifications of the buyer.

The survey report revealed several material differences in state and federal thinking and practices. The most significant differences relate to the application of competitive sealed bidding, which is the predominant purchasing method of the states, but in federal procurement, where it is referred to as "formal advertising," it has become so structured and constricted by law and regulation that it fails to meet today's purchasing needs.

As Stanley N. Sherman notes in a study of federal procurement, *Government Procurement Management* (1981), "Procurement managers in the federal system have found that sealed bidding cannot be used for most procurement." This statement is illustrated by a table of procurement methods employed by the federal government in fiscal year 1980, which shows formal advertising as the method used for only 13.7 percent of the procurement actions and 9.8 percent of dollars expended.

The survey conducted for the Congress was updated in 1981 and is one of the four major data sources used for this book. The other three are:

- A survey of the 50 states made by The Council of State Governments and the National Association of State Purchasing Officials in August 1981.
- An October 1981 report of the Research Committee of the National Institute for Governmental Purchasing survey of 94 jurisdictions, including cities, counties, cities/counties combined, towns and municipalities, authorities, educational activities, and Canadian agencies.
- A survey of 166 local governments and agencies conducted by the National Institute for Governmental Purchasing in December 1981.

Details of these surveys are given in the Appendix. It should be noted that disparities between programs of state governments and those of local governments make it impractical for the survey questions to be always the same for both groups. In many instances, however, where not identical they are similar.

The surveys and succeeding chapters point to the fundamentals and needs of a sound and effective central purchasing program. Those that are legal and ideological are attainable without cost. Others, such as an operative inspection and testing program and a capability for generating management data (if not already adequate) will require additional funds. It is at this point prior to discussion of how to determine strengths and weaknesses, how to effect improvements, and how programs can be made more cost effective, that purchasing managers and governmental budget policy-makers alike need to understand the extent to which informed decision making and execution by central purchasing depend upon appropriate funding and able staff. This is indicated in survey profiles of current programs.

The decade of the 1980s is bringing new duties and challenges to central purchasing, the essence of which is that public accountability will be measured not only by honesty and fairness in awarding contracts, but also by the ability to make purchases that represent optimum value. Along with this objective, changes are occurring in several areas.

Purchasing procedures will be altered by developments in telecommunications. Methods of submitting bids and other information, and the definition of a sealed bid, will be affected. The progression to computer telephones, to interactive communications, to machines capable of "thinking," is transforming the assembly and application of information beyond that customarily thought of as data. Though such changes may approach the radical, there is no indication they may force alteration of the underlying principles of public contracting.

Surveys show that the move to greater centralization of the purchasing and contracting function is accelerating. This need not relate to all procedures and routines of the purchasing process, where the relative effectiveness of centralization/decentralization will likely be determined by advances in telecommunications. But it does apply to law, policy, rules, and accountability. It applies also to the kinds of contracts for which central purchasing is responsible. Until very recently, contracts for most types of services were handled by the individual departments and program agencies. This continues to be the case in many jurisdictions, but the trend to bring these to central purchasing is clear. In the mid 1970s, for example, central purchasing offices in only a few states were involved

in the acquisition of professional services; in 1981, the number had increased to 28.

While the conventional rationale given for centralization is lower prices resulting from consolidating requirements for volume buying, serious inquiries find other reasons, which taken together are even more compelling. Among them are unification of policy, with consistency of purpose and decision-making; more accurate adherence to rules and principles governing public contracting; specialized planning and scheduling, and the timing of purchases to advantageous markets; greater utilization of equipment and materials through transfers between agencies; and perhaps most important, emphasis on the overall public interest, with accountability for that interest located in a single place.

In-depth studies in both the United States and other free-market countries consistently recommend centralization of purchasing responsibility. Thus in Australia, as a result of the first examination devoted exclusively to the effectiveness of the nation's whole purchasing system, the Committee of Inquiry into Government Procurement Policy recommended in 1974 the establishment of a commission "to undertake the coordination of purchasing policy for all Australian Government bodies and to carry out the centralized purchasing function."

Government "bodies" are seldom enthusiastic about centralized purchasing. Buying is a daily human activity, characterized in personal expenditures by the exercise of opinion and preference, which are the objectives of commercial advertising. Government purchasing, however, cannot be conducted in these terms, and the fact is that a competent central purchasing office can be expected to make more objective and informed purchasing decisions than a using agency. Skillful purchasing in a modern economy is a complex, demanding and time-consuming task that is better placed in the hands of a trained central staff while program agency personnel devote full attention to their respective missions.

There are strong indications that the next few years will see critical attention directed to stimulating greater competitiveness in public contracting. In 1981, the National Institute for Governmental Purchasing joined the National Association of State Purchasing Officials in adopting strongly worded resolutions opposing the use of most-favored-customer pricing clauses and multiple award contracts. Both practices, used mostly by the federal government, have negative effects on competition throughout public contracting. The first sets a floor on prices and is favored by firms which enjoy commanding positions in the marketplace. The second transfers buying decisions as to product, brand and supplier from central purchasing to using agencies and is extolled by certain groups of sellers, including the audio-visual and business machine industries, as a method superior to competitive bidding for buying their products. Regrettably, many major suppliers predicate their government sales philosophies and policies almost solely upon experience with the federal government, where established practices often prevent competitive bidding from producing successful results.

The magnitude of antitrust violations, their relation to public contracting, and their cost to the taxpayer is unknown, and scarcely even suspected. Illustrations of this are graphically presented by continuing revelations since early 1981 of bid-rigging on highway construction and other public works contracts. Discoveries give the appearance that such practices are nation-wide. A former attorney general of Georgia is quoted as saying, "It's just like a cancer," and that even after a large number of firms had been indicted or suspended from bidding in that state, his investigators had touched only "the tip of the iceberg."

Although highway public works construction currently is outside the province of most central purchasing offices, widespread publicity given to these exposures is alerting all public contracting officials and public attorneys once again to the seriousness of collusive bidding. Recoveries of damages are being sought from violators, and new or amended laws prohibiting price-fixing and bid-rigging are being enacted. Whether heavier penalties can effectively deter the practices has not been determined, but one state increased statutory penalties in 1981 from a misdemeanor to a felony, from a two-year maximum sentence to 10 years, and has provided for fines up to $100,000 for an individual and $1 million for a corporation.

Obviously, the principles of competitive bidding lose their meaning, and laws requiring competitive bidding are defeated, when bidding is not competitive. An article in the *Public Contract Law Journal,* May 1976, written in connection with work being done on the American Bar Association Model Procurement Code, pointed out that public contracting is plagued with collusion and other anticompetitive practices on the part of bidders and designated the subject as one the Code needed to face squarely. Unfortunately, the Model Code does not do this and does not provide measures to aid purchasing officials in combating the problem, such as a requirement for non-collusion affidavits or authority to reject bids and negotiate when collusion is indicated or apparent.

A new vigilance is needed in the 1980s to preserve competition and advance the value of competitive sealed bidding as the preferred method of public contracting. While these are customarily recognized as principles and foundations, there are always those who would seek to derogate and avoid them. Against price-fixers and bid-riggers, there will have to be added determination in detection and greater energy in enforcement. For detractors, and for the general public, public purchasing officials need to emphasize modern techniques that render competitive sealed bidding typically the suitable procurement method for determining optimum value.

Use of public purchasing for socioeconomic goals calls for new analysis and appraisal. Such programs take numerous forms, from providing percentage preferences

for local bidders to allocating certain business to certain groups. All of them contradict basic purposes of public contracting with regard to impartiality, open competition, and acquiring goods and services which represent least cost to the taxpayer. That programs of this kind carry little record of success is recognized even overseas, where a Senior Lecturer in Law at Victoria University, New Zealand, says, "The American experience has clearly revealed that procurement is an inappropriate and expensive avenue for the pursuit of social and economic policy objectives of the government."

The question of sovereign immunity and public contracts probably will have been resolved completely in this decade. State legislatures and courts over the years have gradually but steadily reduced the traditional immunity of jurisdictions from suit over contractual matters. Opinion now prevails that public bodies should be subject to essentially the same contractual obligations as private parties, and waiver of sovereign immunity with respect to public contracts is recommended by the American Bar Association. Consequently, government purchasing offices shall have to reconsider their roles regarding breach of contract and contracting for damages, and government employees authorized to enter into and enforce contracts shall have to become more aware of their potential for incurring liability.

The contemporary and successful central purchasing program is becoming more management-oriented. It seeks continuously to reappraise its purposes and evaluate its performance in terms of specific objectives and to strive to improve the quality of its output while controlling unit costs of operation.

Management aspects of purchasing and supply are introducing a new emphasis to the work. This has been inhibited in the past by inability to acquire accurate and current data, and because purchasing professionals have been seen, and have seen themselves, only as practitioners. It has been said with some validity that purchasers "don't think like managers." The public purchasing officer is the recipient of pressures from many directions for special dispensations; they flow from the elected and their appointees and supporters, from the business community—local and multinational—and from advocates of minorities, the disadvantaged, and ethnic groups. Coupled with heavy workloads and understaffing, the purchasing office can be inclined to become overly client-related and lose sight of its primary responsibility to conserve funds for the benefit of the taxpayer. This can occur at any level of procurement. Where this attitude prevails, the central purchasing function does not receive strong executive or legislative support, and purchasing expertise tends to be dominated by administrators and technical personnel of using agencies who are without knowledge or experience in the conduct of procurement.

Often, working titles in the purchasing function do not imply authority or directive responsibilities. "Buyer," "contracting officer," "purchasing officer," "purchasing agent," and "procurement officer" do not sound like managers. Managerial duties are reinforced as designations such as "purchasing adsministrator," "purchasing director," and "purchasing manager" come into wider usage.

The single most important factor in providing central purchasing with greater management capability is empirical knowledge available through developments in telecomputer technology. This makes a highly refined purchasing management information system feasible and cost-effective. The capability also encourages more workable centralization of some functions and decentralization of others. The application of mangement concepts and the use of this versatile tool will be major components in the evolvement of public contracting. In the process, the purchasing manager will have a rare opportunity to confirm priorities and solidify conservation of public funds as the paramount obligations of the office.

Effective purchasing management can bridge a gap that has long hindered many central purchasing programs—lack of ready access to key government decision-makers. With this change will come new and appropriate responsibilities, such as greater participation in "make or buy" decisions—that is, whether it is to the jurisdiction's benefit to perform certain work or to contract for it with the private sector.

A well-devised purchasing management information system and the data which support it lend themselves to the idea of total supply. Total supply expands on the oft-described purchasing duties of buying the "right quality at the right time at the right price" to include "from the right supplier, and in the most effective manner, for ultimate economy."

- Buying the right quality implies a responsibility for sound specifications, for standards, for value analysis, for testing and inspection, and for property utilization.
- Buying the right quantity at the right time implies a responsibility for planning and scheduling, for inventory management, for market analysis, and for the use of aids such as economic order quantity formulas.
- Buying at the right price implies a responsibility for obtaining full and bona fide competition, for evaluating tenders to arrive at maximum economy, for auditing suppliers records as needed, and for working with using agencies and vendors to reduce costs.
- Buying from the right supplier implies a responsibility for bidder qualification, for appropriate bonding, and for vendor performance and evaluation.
- Buying in the most effective manner implies a responsibility for effective operating rules and procedures, for maintaining a program of study and research, for personnel training, for forms design, for cost reduction, and for using a variety of techniques such as term contracts, scheduled purchases, blanket orders, traveling requisitions, negotiation, stockless buying as well as warehousing, and numerous automated procedures.

In addition, total supply encompasses responsibility for interagency transfer and final disposition of excess and surplus property.

Some years ago, a vice-president of a large American

corporation pointed out that, consciously or unconsciously, the purchasing agent exercises direct influences upon economic destinies. Purchasing can encourage or deter the growth of monopolies. It can impede price-fixing and stimulate competition. It can provide incentives for manufacturing better products and starting new enterprises. It can bar dishonest and incompetent suppliers. It can improve industrial efficiency, or bring about the failure of marginal businesses. The duties of the purchasing official and his position in the flow of commerce offer unique circumstances for economic statesmanship. This role is best served by the proficiency and understanding of an experienced purchasing manager.

Another increasingly important aspect in the development of public purchasing is improvement in methods for arriving at real costs. These relate particularly to techniques for making economic evaluations of performance differences in products submitted under competitive sealed bidding, rather than specifying uniformity. The manufacturer and seller of superior products can welcome opportunities to compete on a basis of performance as well as price. Emphasis is changing from awarding contracts strictly according to low initial price to ascertaining the product or service that is most economical for the intended use. This increases competition, renders competitive bidding more results oriented, and makes it more serviceable for the taxpayer, the using agency, and the bidder.

As recently as the mid-1960s a director of a university school of business administration questioned whether the objectives and methods of purchasing, industrial or governmental, were well enough established to be considered a rational process. He further stated that textbooks and journals on purchasing had made no effort to develop any basic theory of the subject. Whether or not these questions have yet been answered to the satisfaction of the academician, this discussion answers them for the governmental sector.

The central theses of this book are that the primary objectives of public purchasing are the prudent expenditure of funds together with equitable treatment of all potential suppliers, and the primary method for accomplishing them is by entering into contracts after inviting competitive bids and evaluating competent responses for overall economy.

3. Purchasing Structure, Policy and Authority

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Establish a central purchasing authority responsible for policy-making and oversight of public contracting by the jurisdiction and establish a central purchasing office responsible for management and direction of the full spectrum of procurement activities.

Establish an office of chief purchasing official with requirements for prior experience and provision for limited tenure.

Include a provision transferring rights and powers relating to purchasing and supply management from departments and agencies to the central authority.

Define the organizational placement of the central purchasing function at a level to ensure that sufficient authority, independence and safeguards are provided to foster the goals and objectives of the purchasing program.

Define the accountability, responsibility and authority of central purchasing; authorize delegation by central purchasing; and exclude blanket exemption for any agency

Require using agency adherence to purchasing law and to rules and central purchasing policies and procedures when delegation is extended; direct central purchasing to monitor all delegated purchasing activities.

Define key words and phrases and any words having special meaning for purposes of the purchasing statute.

Require rules and regulations for certain purposes and authorize the policy-making authority to adopt any additional rules, not inconsistent with the statute, to carry out the purpose of the law.

Clearly define legislative intent while providing suitable administrative discretion in central purchasing; i.e., be not so detailed and definitive as to be unduly restrictive.

Provide that words in the singular include the plural and the plural includes the singular.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Prescribe conditions and the manner by which central purchasing may delegate authorities and functions to other agencies.

Authorize the chief purchasing official to delegate duties and convey assignments to staff employees.

Authorize central purchasing to have responsibility for the content and correctness of solicitations and contracts, including specifications and contractual terms and conditions.

Authorize central purchasing to negotiate the transfer of contractual obligations when a current supplier is involved in a consolidation or merger.

Recommended Practices

Purchasing should be management-oriented and address the full range of procurement activities, including planning, acquisition, standards and quality assurance, contract administration, and disposition programs.

Purchasing goals and objectives should be established and set forth in writing.

Central purchasing should delegate routines and activities that can be more logically, effectively and efficiently performed by others.

There should be written instructions governing activities central purchasing delegates to other departments and agencies, including the manner in which such activities will be monitored by central purchasing.

The organizational placement of central purchasing and its internal functional organization should be depicted and described in writing, and this information widely disseminated.

Coordination and cooperation must be developed to unite the technical expertise of purchasing and the users to effectively carry out the purchasing program.

Team buying should be encouraged as an effective technique that provides commodity specialization, experienced backup, and group decision-making.

The structure of the central public purchasing authority must conform to its unique status: government procurement is an "act in agency," a special relationship which calls for the purchasing official to act for others, to commit their budgets, and to influence their programs. Central purchasing is one of the few government responsibilities that cuts widely across agency lines, and possibly the only one with the primary mandate to conserve public funds. This distinctive legal position and the duties which attend it demand that purchasing be conducted in a peer relationship with the agencies it serves.

The conventional view of public purchasing is that it

seeks to acquire goods and services at economical prices. This is, perhaps, almost the extent of the general public's understanding of the function. Not fully perceived are a number of basic distinctions between public purchasing and private purchasing. Spending public moneys calls for non-restrictive specifications, prohibitions against negotiation following the public opening of sealed bids, legal penalties for acts of favoritism and conflict of interest, and above all, the public interest, not the private interest, held paramount. Also not well understood, even by many public purchasing people themselves until the last few years, are the management aspects of the function. The attention of a purchasing program is directed naturally to the acquisition phase. Yet effective acquisition depends on many decisions and actions that precede and follow awarding a contract or issuing a purchase order.

Both law and policy must recognize that within a framework of safeguards to protect the public interest, a sound and progressive system requires that public purchasing officials have freedom to exercise professional judgment and personal initiative. A productive public purchasing program must be more than a ministerial assignment. Governmental purchasing is a complex combination of law, economics, engineering, methodologies and public policy. The continuing development of highly specialized goods and services which can become obsolete in a relatively short time necessitates that purchasing officials remain up-to-date as to technical knowledge, market conditions, and purchasing methods and skills. The successful program has capability for adjusting to fluctuating circumstances in a complex marketplace that reacts to social, political and economic forces, local, national and international, which are largely unpredictable. Without this flexibility, purchasing cannot meet the government's needs advantageously.

POLICY AND MANAGEMENT

Public purchasing policy is expressed through different means. Formally, it is structured by way of statutes and ordinances, rules and regulations, policy manuals, administrative procedures, and manuals written for internal operations and for vendors' information. Less formally, it evolves through unwritten practices. Sometimes policy is defined by the courts, as in the case of the ruling that the purpose of laws requiring competitive bidding is the conservation of public funds.

Unfortunately, purchasing law and policy in many jurisdictions, and particularly the states, have become fragmented, contradictory, and confusing. The time has arrived when effectiveness and consistency demand that procurement policy be unified.

A board or office responsible for purchasing policy is a direct and logical means of doing this. Separation of policy-making and operations is a basic concept of the American Bar Association Model Procurement Code (MPC). The body which serves in this capacity can be called a board, commission, council, office or other designation.

In this discussion, it is referred to primarily as a "board," both for consistency and to identify the idea of a board of directors for the management of the public contracting function.

A policy board has two primary duties. First, it formulates rules and regulations to implement purchasing law, acting as a single rulemaking authority. Second, it oversees procurement operation for compliance with applicable rules, acting as a monitor for accountability. Overall, it enunciates purchasing policy and serves central purchasing as a forum for policy-related questions.

To carry out these responsibilities, the board should be small, consisting of three to five persons. It can be an external board, made up of non-government employees appointed by the governor or jointly by the governor and the legislature; an internal board, comprised of employees associated with fiscal and legal matters; or a mixture of internal and external members.

The advantages of an independent mechanism for coordinating, modifying, and maintaining purchasing policy are apparent when current practices are examined closely. Thus, the foremost recommendation of the Congressional Commission on Government Procurement was the creation of a central policy office. In establishing the Office of Federal Procurement Policy, however, the Congress failed to convey authority consistent with responsibility. The language in Article 2 of the Model Procurement Code emphasizes that state and local governments should thoroughly spell out the respective authorities of the Policy Office and the Chief Procurement Officer.

There will always be debate as to the extent to which policy should be detailed in statutory law. With respect to purchasing, studies made over the past quarter of a century recommend that statutes include only broad requirements and authorizations, to be implemented by appropriate rules and regulations.

Apart from policy, the management and operation of public contracting in many jurisdictions also are likely to be scattered among different agencies and institutions. The problems presented by this, however, are not necessarily analogous to those related to diffused policy-making authority. A number of purchasing routines and decisions can be, and often should be, delegated to operating agencies without loss of effectiveness.

A prerequisite to overall purchasing management is central responsibility. Recognizing that there are different levels of government and various sizes of purchasing programs, *the constant element should be a central purchasing authority responsible for assuring that the principles and attendant requirements of the purchasing program are met.* At the state level, and for large units of local government, the purchasing authority should rest in a central staff and office. In some local governments, purchasing is so small an activity it may be handled by one individual on a full- or part-time basis. In any case, there should be a single authority in each governmental unit responsible for assuring the integrity and effec-

tiveness of the program. Accountability assigned to a single point provides incentive to produce positive results. Of the states responding to the question, some 70 percent report a trend toward more centralization of purchasing policy. The figure for local governments is nearly 80 percent.

Management orientation is basic to the concept of a central purchasing authority. The purchasing program encompasses much more than merely buying or placing orders. It must shape its policies and procedures to identify with the public interest. Functions such as planning and scheduling, establishing contractual terms and conditions advantageous to the taxpayer, soliciting and evaluating bids and offers, and awarding contracts are only parts of the acquisition process. Contract administration is an important aspect of purchasing management, as are quality assurance, transfer and disposal of surplus property, and safeguarding the legitimate interests of using agencies and vendors. The preparation of standards and specifications and the conduct of inspections and tests have to be closely integrated with acquisition. Specifications must designate what is needed, and promote fair competition. Testing often is required in developing specifications and in evaluating bidders' offerings for award and subsequently, upon delivery, as an adjunct to inspection in determining compliance with specifications.

Central purchasing also should be the center for information on sources of supply, vendor performance and bidder responsibility, inventory levels and commodity usage.

A management-oriented program regularly reviews the exercise of its authority in terms of the activities it should retain and those that may be suitably delegated.

Goals and Objectives

Certain traditional purposes of the purchasing assignment remain valid: to buy the right quality at the right time at the right price from capable suppliers. But the duties and responsibilities of a public central purchasing office extend far beyond this. Law requires that public purchasing be conducted without favoritism and without arbitrariness or caprice. The taxpayer expects goods and services to be acquired in an efficient manner, and the articles bought to be warehoused, maintained, transferred and eventually disposed of economically and advantageously.

Purchasing management recognizes these responsibilities, some of which are explicit, some implied. A management-conscious program that encompasses the idea of overall supply operates to serve the public interest more completely through such goals as:

- Pursuing professional excellence and communicating this to using agencies, administrators, officials, and the public.
- Striving to improve employee motivation and productivity.
- Encouraging innovation by a program of study and research.
- Seeking and refining quantitative purchasing performance measures.
- Controlling the costs of the purchasing operation.
- Endeavoring to direct legislation toward comprehensive purchasing management.
- Working with using agencies and with vendors to bring about cost reductions.
- Reviewing systematically comparative cost benefits of performing work in-house or contracting it out.
- Using automated procedures to provide current, accurate information.
- Developing a continuing program for buyer and supervisory training.
- Using team buying and other organizational rearrangements for more effective performance.
- Keeping open communications with news media.

These are broad aims. They require periodic review and appraisal in terms of progress toward specific objectives.

PURCHASING LAW

The purchasing statute or ordinance establishes not only the legal base, but the policy base and much of the philosophical base of the public purchasing and contracting program. Because of this broad-based effect, extensive thought and care need to go into the drafting process, whether it is a new statute, a rewrite, or an amendment.

Unfortunately, in many state and local jurisdictions purchasing laws have been passed in piecemeal fashion, over many years, reflecting what seemed a good idea or was politically expedient at the time. As a result, they tend to be disjointed, outdated, and inadequate in a number of respects.

Interest in state and local government purchasing laws began to increase following World War II and has spread steadily into the 1980s. During this time, the National Institute of Governmental Purchasing, the National Institute of Municipal Law Officers, the National Association of State Purchasing Officials, The Council of State Governments, the Law Enforcement Assistance Administration of the federal government, and the American Bar Association have sought, separately and together, to examine the public purchasing function and to make recommendations for improving it.

It appears safe to predict that these studies and efforts will bring about revisions and additions to virtually all state and local laws, rules and regulations which will help modernize and advance the governing base of their purchasing operations.

These several inquiries have a number of common findings: that openness and fairness are fundamental to public contracting; that purchasing should be centralized; that competitive sealed bidding is the preferred method for obtaining prices; and that purchasing statutes and ordinances should set out general provisions characterized by clear intent, and require or otherwise

authorize that detail be left to implementing rules, regulations, and operating procedures.

Exemptions

Some state statutes provide blanket exemptions from central purchasing for designated agencies, commodities, or both. Often, agencies may be exempt for historical reasons—those that traditionally have been highly autonomous organizations, perhaps with segregated funding. Other agencies have been permitted to purchase highly technical items on the grounds they have in particular expertise. Neither exemption, however, is consistent with the concept of central purchasing. The long-standing tradition of autonomous and politically powerful agencies is difficult to overcome, yet it should not override the fundamentals of a purchasing program that is not advantageous to the taxpayer.

If the legislative body may wish to indicate certain items it considers especially appropriate for purchase delegation, such as museum displays or text books, a successful method of doing so is by a provision that "unless otherwise directed by the (policy board or other rulemaking authority), the following requirements need not be procured through the (central purchasing office); procurement shall, however, be made in accordance with the purchasing statute and applicable rules and regulations of the (policy board)."

The argument for direct purchase of highly technical and specialized equipment by using agencies is not a valid cause for blanket agency exemption. Instead, it is more appropriate for agency expertise and central purchasing expertise to work closely together in preparing technical specifications and in evaluating bids and offers received.

Moreover, where a purchase is made under a "total cost" concept, which takes consideration initial costs plus maintenance, operating, and related costs, data from several using agencies may be necessary for making cost comparisons and evaluations. Purchases of highly technical items, such as x-ray equipment, telecommunications equipment, and computer hardware and software, usually require the combined expertise of a number of agencies working together with central purchasing. For example, when procuring computer equipment, experts in automatic data processing provide certain technical information for preparing and evaluating bids, and the using agency supplies information on the intended use of the equipment. Central purchasing, however, manages the acquisition process, preparing the Invitations for Bids, including contractual provisions, soliciting bids, evaluating responses, and awarding the contract. After award, central purchasing should have overall responsibility for administration of the contract. Throughout the transaction, central purchasing has the continuity of experience and the machinery to bring together specialized information for high technology procurement which affords a perspective not available to the individual using agency.

STATUTORY AIDS

Definitions

Statutory and regulatory material can benefit by a section of definitions to reduce the likelihood of misinterpretation and misunderstanding. Furthermore, the use of common definitions facilitates everyday communication between state and local government units.

Terms such as "specifications" and "standard specifications" should be precisely defined, as should "formal bidding" and "informal bidding." The word "emergency" should have a specific meaning when it refers to situations that can lead to an emergency purchase, and even the word "purchase" might need definition because questions may arise as to whether it includes leasing, renting, and the acquisition of such things as insurance, printing, and certain services.

A section of definitions can also serve to establish shorthand expressions for clarity and to avoid cumbersome repetitions. For example, in a fully centralized organization where purchasing acquires goods and services for all governmental elements, the term "agency" can be given generic meaning to represent a long list of designations, such as department, institution, board, bureau, commission, division, and office, which otherwise would be listed repetitively throughout the statute. The glossary contained in Appendix D contains accepted definitions useful for incorporating into statutory and administrative law.

Declaration of Policy

A sound purchasing system must be adaptable and responsive to changing conditions. Consequently, *while statutory language should be kept to a reasonable minimum, avoiding unnecessary restrictiveness and detail, a section in the purchasing law setting forth the underlying policy of the purchasing statute can provide help and guidance to the rulemaking authority and to central purchasing operations.* A policy provision can also support discretionary actions and rules and regulations issued pursuant to the purchasing statute, if they come under legal or judicial scrutiny. Such a declaration of policy, or statement of purpose, should incorporate the following elements:

- The concept of a central purchasing authority to institute and maintain an effective and economical program for purchasing goods and services.
- The recognition of obligation to the taxpayers, the using agencies, and the suppliers.
- The enhancement of competition on the basis of fair opportunity and equitable treatment.
- The obtaining of needed equipment, materials, supplies, and services at favorable prices in keeping with suitability, appropriate quality, and reliable vendor performance.

The following "Declaration of Policy" section is an example paraphrased from an existing statute:

> Recognizing its obligations to the public, to the services rendered by state agencies, to the business community, and specifically to overall economy for the taxpayer, it is hereby declared the policy of the State to provide an effective central purchasing program through which, by means of competition on the basis of fair and equal opportunity extended to qualified persons and firms interested in selling to the state, state agencies may obtain needed goods and services at competitive costs consistent with suitable quality and time of performance.

ORGANIZATION

Position in Government

The central purchasing authority must be able to exercise independent professional judgment in dealing fairly with vendors, coordinating requirements with other government departments and agencies, providing timely and quality service, and protecting the public interest. It also must be able to relate to vendors and agency administrators from a position of authority in keeping with its responsibilities. Purchasing's independence and effectiveness can be affected either positively or negatively by its placement in the government structure. Factors such as organizational and management philosophy, tradition, the size of the purchasing program, and resources available to it have a major effect on this consideration. There is no one best organization arrangement; what may work well in one state or local government may not work as well in another.

Recent surveys show that with the exception of one state, which has "central supervision," every state has some form of centralized purchasing. However, in the majority of states the central purchasing office does not handle purchases or contracts for all departments or agencies. Exemptions found most often are the legislative and judicial branches, followed by institutions of higher education and departments of highways or transportation.

As the scale and diversity of purchasing grows, many central purchasing offices have expanded delegation of purchasing functions to using agencies. Delegation may vary from authority to write purchase orders against mandatory-to-buy-contracts and a dollar ceiling below which agencies may obtain their own quotations, to a grant of considerable autonomy conditioned on central policies, rules, and procedures. Frequently, exemptions deal with specific commodity areas, ranging from alcoholic beverages to fresh vegetables. In 21 states, centralized purchasing is not responsible for the procurement of professional services.

In 1964, 30 states reported the purchasing office was part of an integrated management department, e.g., administration, general services, or finance. By 1977, the number increased to 46 states, and in 1981 the purchasing function was incorporated in an integrated management department in every state but one.

Fundamentally, the need is to place the central purchasing authority at a high level in the governmental hierarchy. The majority of state and local governments studied have one or two persons between the chief purchasing official and the chief executive. In these governments, public purchasing operates as a bureau or division within a department. In some instances the department head, though he or she may have no experience or ability in public contracting, has the statutory or legal responsibility for purchasing. In other instances the operating head of the purchasing division is designated by statute or ordinance as the chief purchasing official. Irrespective of the department which may house central purchasing for administrative purposes, the function is so linked with internal government operation and with outside commerce that to date some 20 states report having a board, commission, or staff unit with responsibility for overseeing purchasing procedures. As already stated, a policy board or office which formulates rules and regulations, advises or serves as the arbiter on policy questions, and monitors the overall program, provides an organizational plan under which the goals and objectives of central purchasing can be pursued relatively free from governmental and outside political influence or other pressures. The policy board acts as the governing body of the purchasing program, lending its credibility and strength to program improvements. The board may appoint a full-time director who serves as the chief purchasing official, or the director may be appointed by the governor, usually with approval of the board. To the extent that government officials are included on the board a beneficial mixture of viewpoints can be provided. To be effective, the board must meet regularly and be actively interested. It functions best if a small body, and care must be taken that its members avoid any potential conflicts of interest.

For cities and counties where the size and volume of the purchasing activity call for a central office, its goals and objectives are more likely to be met if it is established as a separate unit on equal footing with other major departments. For local governments where central purchasing rests with a single individual, that individual needs sufficient authority and responsibility to achieve purchasing's purposes.

While it is not possible to set forth a single plan of organization that would be ideal for all state or local governments, the trend toward establishment of a policy board is strongly endorsed. Beyond that, *whatever the organization, the central purchasing function should occupy a level of authority which provides the stature necessary to coordinate and deal with other departments and agencies effectively and which, at the same time, is designed to prevent purchasing decisions being influenced by partisan political pressures or other considerations which would represent favoritism.*

AUTHORITY OF CENTRAL PURCHASING

Central purchasing requires clear and adequate authority to carry out its responsibilities. An example of conferring this authority is found in a state statutory provision under which "all rights, powers, duties and authority relating to state printing or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any state department, institution or agency under the several statutes relating thereto, are hereby transferred to the (central purchasing office) and all said rights, powers, duties and authority are hereby imposed upon and hereafter shall be exercised by the (central purchasing office) under the provisions of (this Act)." The Model Procurement Code contains a similar stipulation.

In addition to this general type of provision, the chief purchasing official should have broad statutory authorization, subject to rules and regulations, to purchase and contract for needed goods and services, to establish and enforce purchase specifications, to have general supervision over inventories of equipment and supplies belonging to the jurisdiction, to prescribe forms and require information from using agencies relating to the purchase and management of goods and services, to transfer or sell any items that are excess or surplus, and to delegate authority to staff and to using agencies to perform these duties.

The policy board not only should have statutory authorization sufficient to adopt any rules and regulations to carry out the purposes of the law; it should be specifically required to establish rules on particular matters, such as small purchase procedures and confidentiality of certain types of information.

In fulfilling its duties, the policy board should be careful to include rules under which central purchasing is authorized to:

- Determine the terms and conditions applicable to solicitations and to contracts.
- Decide lead times and schedules for the receipt of agency purchasing requisitions.
- Reject agency purchase requisitions for cause, including inappropriate quantity or quality of an item requested or time for making the purchase, and undue restrictiveness of specifications.
- Determine whether an item may be purchased more advantageously if obtained separately from a contract for construction.
- Negotiate the transfer of a contract when suppliers are involved in corporate consolidations, acquisitions, or mergers.
- Refer disagreements between central purchasing and a using agency concerning a purchase requisition to the policy board.

PROFESSIONAL COMPETENCE AND TENURE OF THE CHIEF PURCHASING OFFICIAL

Present practices regarding employment of the chief purchasing official vary widely among state and local governments. A 1981 survey of some 120 jurisdictions by the Research Committee of the National Institute of Governmental Purchasing provided comparisons. Respondents were a mix of state, city, county, city/county merger, town, authority/commission, and education governments and agencies, and six Canadian jurisdictions. Eighty percent of the respondents were state, city, and county governments.

In the matter of qualifications for the position of chief purchasing officer, approximately 70 percent of the jurisdictions require a college degree; and of those which specify minimum experience, some 63 percent require four to nine years and over 16 percent require 10 years or more.

In selecting a person for the position, 36 percent of those reporting follow the practice of appointment, with the purchasing official serving at the pleasure of the appointer; 33 percent fill the position also by appointment but with removal only for cause; 29 percent have the position included under civil service; and 2 percent have a fixed-term period. After lengthy consideration of this question, the American Bar Association Model Code is silent on the matter of educational requirement but recommends: (a) filling the position through appointment, by either the Policy Office or the governor, with a person demonstrating executive and organizational ability and a minimum of eight years experience, five of which shall have been in large-scale public procurement within the 12 years preceding appointment; and (b) that the appointment be for a 10-year term with removal only upon showing just cause.

As with the need for a policy board, the importance of qualifications and tenure for the chief purchasing official is proportionate to the duties and responsibilities of the central purchasing office. Where the purchasing and contracting authority is highly centralized, and the operational head of the office serves in fact as the jurisdiction's primary contracting officer, the requirements should be exacting and tenure provided. For such an operation at the level of a state or large local government, the requirements should be not less than those indicated by the Model Procurement Code, including a specified minimum term and removal only for cause.

Irrespective of the size or nature of a jurisdiction, public purchasing cannot afford to be influenced by or become subject to partisan political considerations. Favoritism in public contracting is unlawful, undermines good government, and is detrimental to an incumbent administration.

DELEGATION BY CENTRAL PURCHASING

The chief purchasing official, like any executive, has to make delegations of authority to his staff. Delegations should provide for prior review of certain types of actions at appropriate levels of supervision.

The chief purchasing official must also be able to make delegations to other departments and agencies. Thus, purchasing law should provide authorization for both internal and external delegations. Delegations should be made in writing and may be for a specific circumstance, for a designated period of time, or for an indefinite period unless changed or revoked. Delegations should be conditioned upon the level of capability in the delegated office and upon competent performance.

Centralization of purchasing authority does not mean that all decisions and actions should be carried out by or in the central office. In many jurisdictions, geography is a necessary consideration—the wider the using agencies are scattered, the more impractical it can be to route every purchasing action through a central point. One aspect of a management-oriented program is the delegation of routine and detail when they can be performed more logically and efficiently by others.

Ultimately, centralization becomes a matter of degree. There are some duties which should be centralized. One of these, without question, is the formulation of policy, rules, and regulations. Others, to the extent practicable, are:

- Developing or adopting product standards and specifications.
- Preparing formats and contractual terms and conditions under which bids or offers are solicited.
- Determining awards of large volume purchases and major contracts.
- Prescribing standard forms to be used and standard procedures to be followed.
- Operating a central purchasing data system.
- Mediating protests and disputes between using agencies, bidders, and contractors.
- Imposing penalties for non-performance of contracts.
- Developing a standard commodity coding system.
- Designing a uniform inventory program.
- Transferring excess property between and among agencies and making final sale or other disposition of surplus property.
- Preparing reports for top management and the legislative branch of government.

On the other hand, many day-to-day purchasing activities can be successfully delegated to using agencies, ranging from making small purchases and contracting for various kinds of local services to issuing purchase orders to vendors and inspecting and accepting goods at time of delivery.

In making appropriate and practical delegations, *central purchasing should maintain overall legal authority, responsibility, and accountability for implementing the purchasing program and establishing the policies, procedures, and controls for delegation.*

INTERNAL ORGANIZATION

In considering the functional organization of a central purchasing program, the underlying concept needs to be one of overall materials management, not merely acquisition. Such a program includes planning, acquisition, quality assurance, and transfer and disposal. The levels of knowledge and experience and the quantity and quality of resources (manpower, funds, facilities, and equipment) available in a state and local government are major considerations in determining the kind of internal organization that is most workable.

The organizational placement of purchasing, its internal functional organization, and the basic interrelationships with other departments should be illustrated in chart form and described in writing. Effective communication and working relationships among all of the activities are necessary if such an organization is to be dynamic and successful.

ACQUISITION PROGRAM

As indicated earlier, the acquisition aspects of the purchasing activity embody planning and scheduling; consolidation of agency needs for volume buying; development of specifications; preparing Invitations for Bids and Requests for Proposals, and soliciting bids and proposals; receiving, opening, and evaluating bids and offers, and making awards; expediting and administering contracts; and monitoring vendor performance. Planning and scheduling needs greater emphasis than it has been given traditionally. This management activity should play an important role in budgeting, reducing unit costs through volume buying, consolidating and validating agency needs, and determining how these needs can best be met. Greater attention should also be given to contract administration. This responsibility needs to be adequately defined and centrally administered to assure that suppliers meet contractual terms and conditions.

The design of the Invitation for Bids or Request for Proposals is critical to every procurement. Basic considerations are: the contractual terms and conditions which must be written to protect the interest of the government; openness of specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the proposal. Solicitation also includes the organization and maintenance of bidders lists, the prequalification of suppliers, giving public notice, and the need, if any, for bid security. Solicitations should seek full competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete. The evaluation and award of offers require determinations of responsiveness and responsibility; criteria for award and for rejection, to arrive at the most economical and advantageous bid or offer; and public availability of information as to the prices and products tendered.

To the extent that a cooperative purchasing program exists between government units, management responsibilities for the program should be placed in a central purchasing office. The leasing or renting of equipment, and related lease versus buy decisions, are also proper responsibilities of the central purchasing authority, as are contracts for repairs and maintenance of equipment and contractual needs such as janitorial and laundry services. Whether or not central purchasing actually handles solicitations and awards of such contracts, or delegates aspects of them to operating agencies, is determined by geographical factors, local conditions, staff size, workload requirements, etc. When the solicitation of competition is delegated to using agencies, it is good practice for central purchasing to design and require the use of a uniform bid solicitation document for the particular type of requirement, including the contract terms and conditions to apply.

Questions sometimes arise as to whether purchasing must have full in-house technical expertise necessary to buy certain items such as printing or insurance. Some central programs have separate sections, including risk managers, that are responsible for purchasing insurance; in other cases, program appropriateness and decisions to self-insure or to purchase are made by risk managers outside of purchasing or by insurance boards. The laws governing public contracting customarily apply to the purchase of printing, which is covered by the inclusion of any special provisions that might be needed. As with insurance, some purchasing programs have separate sections that handle requirements for printing and publications. Central purchasing in a number of jurisdictions handles both of these needs successfully and at considerable cost savings.

Similar considerations relate to the purchase of professional services, such as management consulting, architect and engineering, and medical and legal services. Using agencies must necessarily play an important role in drafting statements of work and in evaluating technical proposals. In some state and local governments, the personnel department must determine that the hourly or other rates proposed are acceptable. Recognizing the need for using agency technical assistance and perhaps some outside personnel administrative controls, however, the central purchasing authority and its governing rules and regulations should exercise an overall responsibility in contracting for professional services.

The question of exemption relates also to the purchase of real estate and buildings, including the leasing of space. The acquisition of real property is usually governed by a separate set of rather complex laws. It can be argued that real estate is not a biddable item, but this in itself should not be a reason for excluding it from purchasing's responsibility. The leasing of space is biddable and should be subject to competitive bidding. With the assistance of outside expertise, purchasing can effectively apply public contracting principles to the purchase and leasing of lands and buildings, though usually with exclusion of condemnations, rights-of-way, and lands for recreation.

In discussing the acquisition program as it relates to internal organization, the concept of team buying is especially important. *Team buying, where more than one person is responsible for purchasing in the same commodity area, is a highly recommended practice.* It improves commodity specialization by providing several persons who are knowledgeable in the same product areas. It assures backup, and it allows for group decision-making with overall responsibility resting with the team leader. Finally, when engineers, pharmacists, instrumentation specialists, and other technically trained and experienced personnel are included on the teams, the preparation of non-standard specifications is facilitated and expedited, with the overall effect of a more unified processing of purchase requisitions and reduction in turn-around time for using agencies. Standard specifications and qualified products lists can remain the primary responsibility of a standards and inspection section.

Few state purchasing offices continue to rotate buyers. The practice is not recommended for several reasons. Many products have become so specialized that a purchasing agent cannot be proficient in all commodities. Furthermore, a high degree of individual specialization is necessary for central purchasing to advise using agencies regarding the availability of different products for various applications, to consult with agencies relative to purchase specifications, to determine the most advantageous methods of purchase, to exchange information with manufacturers' representatives, to make correct decisions concerning restrictiveness of specifications, and to properly evaluate products offered on competitive bids. Thorough product knowledge is as important to effective buying as it is to successful selling.

STANDARDS AND QUALITY ASSURANCE PROGRAM

The standards and quality assurance program covers the activities of standardization, specification writing, inspection, and testing. The processes involved in developing standards and standard specifications address the subject of commodity usage, while inspection and testing have to do with vendor performance. The basic duty of the standards and quality assurance program is to provide a technical resource for the overall procurement effort, and when it functions effectively the combined value of a standards, inspection, and testing program can be inestimable. It should be a component of any complete purchasing organization and should operate under assignments that are well defined. A highly effective arrangement can be developed whereby a small technical staff concentrates on standard specifications, inspection and testing, and unusual technical problems, while much of the everyday specification work is handled by technical and other specialists on purchasing teams. For states, cities, and counties without the resources for a

separate staff, the individual responsible for quality assurance can obtain valuable assistance from other governments, state, local, and federal. No matter how limited a government's resources, quality assurance remains a responsibility of the central purchasing authority. In a broad-based purchasing program, traveling field inspectors play an important role, especially for large governmental units which serve agencies over a wide geographic area.

DISPOSITION PROGRAM

The two primary activities associated with the disposition program are the transfer of excess property from one agency to another and the ultimate disposal of surplus property by means of sealed bids, auction, posted prices, site sales, or direct negotiation. The latter two methods are usually reserved for scrap. While some governments trade in used equipment for new equipment, most of them find upon analysis that they receive more value by transfer or larger monetary return by outright sale.

In jurisdictions which also manage the federal surplus property program, one or more separate administrative organizations are usually created, resulting in considerable duplication. Consideration needs to be given to the advantages of combining the state and federal surplus programs. Sharing warehouse and distribution facilities can work to the benefit of both programs by providing a more concentrated availability of items, attracting more visits from using agencies, and reducing manpower needs. Further, though separation of certain aspects of the two programs is required due to special eligibility, record keeping, and reporting requirements imposed by federal regulations, central purchasing and recipient agencies can realize advantages from a single overall supervision of both programs.

The transfer, utilization, and trade-in or other disposition of excess and surplus property are integral parts of materials management, and *the administration of such programs, state and federal, should be the responsibility of the central purchasing authority.*

4. The Competitive Process

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

State that competitive sealed bidding is the preferred method of procurement; and the justification for use of any other process, except for small purchases, shall be documented by the purchasing official.

Require rules for all purchases expected to exceed a predetermined dollar amount, including public notice, sealed responses, and public opening.

Provide for waiver of competition in defined emergencies, sole-source procurement and under other circumstances or as defined by rule, and require rules for documentation and justification.

Require bidders to certify non-collusion and provide criminal penalties for collusive bidding unless specifically provided elsewhere.

Specify that when identical low bids are received, the central purchasing office may make awards in any reasonable manner intended to discourage identical bidding.

Prohibit use of most-favored-customer pricing clauses, and provide that in-state or other local preference for bidders or products may be given only when there is no sacrifice or loss in quality, performance, or price.

Empower the central purchasing office, subject to implementing rules and regulations, to reject all bids and negotiate or otherwise purchase in the open market when satisfactory bids cannot be obtained.

Exempt, by state legislation, political subdivisions from antitrust laws and provide specifically that award of a large quantity or the total quantity of a jurisdiction's requirements to a single supplier does not constitute discrimination or restraint of trade.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Require by rule that Invitations for Bids and Requests for Proposals be issued to a large enough group of potential suppliers to obtain adequate competition.

Require adequate competition, defined as seeking responses from known qualified suppliers consistent with the size and nature of the intended purchase, while continuously adding to the list of qualified suppliers by locating viable new sources.

Prohibit the issuance of letters-of-intent-to-purchase in advance of soliciting competitive bids or proposals.

Require cost or price analysis for negotiated prices.

Require that any extension or renewal of contracts, except under emergency conditions, be provided for in the original solicitation for bids.

Specify that clauses allowing extension or renewal of contracts awarded under competitive bidding may be exercised at the sole option of the public jurisdiction—not by mutual agreement.

Prescribe procedures for price adjustments.

Require participation of the attorney general in determining periods for retention of purchasing records for antitrust purposes.

Recommended Practices

All purchases should be made in a manner that fosters maximum competition among a sufficient number of prospective bidders.

Purchasing officials should challenge routinely all using agency requests to limit competition; representation of sole source should be particularly challenged.

A bid/award history file should be established and maintained and this data should be analyzed to detect suspected or apparent collusive bidding.

Attorneys general should sponsor training seminars for purchasing officers on collusive bidding and other procurement-related antitrust matters.

Proposed legislation that would affect purchasing should be coordinated with the central purchasing authority.

In government, as in private industry, a primary purchasing objective is to obtain suitable goods and services at favorable prices. In government, however, goods and services are direct costs to the taxpayer, whereas in industry their costs can be passed along, as part of the cost of goods sold, to the ultimate consumer. Thus, a price may be acceptable in industry as long as it is not higher than that paid by a competing firm or does not result in a

competitive disadvantage. In government, the lowest price carries more weight. Also in its duty of representing the taxpayer's interest, public purchasing must carry out its work under public scrutiny. Statutes and regulations customarily require state and local governments to solicit competition for all purchases, usually by means of open competitive sealed bidding. This requirement is intended to secure sound value, to guard against favoritism and profiteering at public expense, and to promote the interest of private enterprise by providing equal opportunities to compete for government business. The procedure of publicly opening sealed bids has long been recognized as one of the best protectors of a healthy and equitable public purchasing system. And as will be seen, a unique characteristic of public purchasing is the underlying principle that *prices paid are not as important as fairness and impartiality in obtaining them.*

DEFINING COMPETITION

Discussion of competition throughout this publication is from the viewpoint of public contracting, not that of the economist, sales marketer, or legal theorist.

Competition presumes a marketplace in which there is more than one supplier of a like commodity or service. Competition exists not only in prices, but in the technical competence of vendors, in their ability to make timely deliveries, and in the quality and performance of their products and services. Competition in this sense has different levels and requires that the central purchasing authority have necessary latitude to evaluate each aspect of competition and thereby arrive at offers that represent optimum value.

For public purchasing purposes, then, competition may be defined as tenders on the part of qualified vendors to secure the business of a unit of government by offering more favorable price, quality, and/or service.

In principle, competition is the centerpiece around which the public contracting process turns. In its best form, it is a mirror of a free and open economy, and when competition is available but is artificially restricted, the principles of public purchasing are defeated.

FOSTERING COMPETITION

The importance of competition demands that acquisitions be made *under conditions which foster competition among a sufficient number of potential vendors representing a wide spectrum of products and marketplace. This is a precept upon which purchasing statutes should be anchored.* For the most part, laws do not fully convey the spirit of this principle.

Most state and local government purchasing statutes provide that purchases exceeding a stipulated dollar amount be based on sealed competitive bids, with public notice and public opening. Some jurisdictions set a figure by policy or rule. In either case, it is a sound requirement. Purchasing officials and the public alike deem sealed bidding the most impartial method for obtaining competitive offers on the great majority of needs. In addition, soliciting reasonable competition should be the standard also for purchases smaller than the dollar amount required for formal bidding.

The importance of seeking competition at all levels of expenditures becomes more apparent as the minimum dollar amounts governing formal bidding are raised. The amounts vary greatly with jurisdictions, ranging in 1979 among the 50 state governments from $200 to $10,000, with six states reporting no figure set by law. In the six latter cases, one state advised that sealed bids apply to all solicitations, with the remaining stating the amount established by policy varies from $500 to $2,500. A trend which began in the late 1970s is to double or triple the existing figure, reflecting the impact of inflation.

Below the dollar amount established by law or policy, statutes usually call for purchases to be based on some form of informal bidding or quotation. The instruction is often so general, however, that it becomes almost an option, implying that competition may be sought on the basis of convenience rather than principle.

Individually, so-called "small purchases" may appear to be of little consequence. But in the aggregate, they constitute a substantial portion of total expenditures; and law, policy, and practice should make it mandatory to obtain adequate and effective competition even though public notice and public opening are not required.

Fundamentally, fostering competition is more a matter of attitude than a procedure or mechanism. It is reflected in the way specifications are written, in searching for new sources of supply, in attempting to make bid documents simple and inviting, in communications with using agencies, and in everyday courteousness shown to prospective suppliers and to contractors.

SEEKING ADEQUATE COMPETITION

In terms of good public purchasing practice, adequate competition means more than merely "sufficient" or "enough." Competition is not adequate when known competent suppliers fail to receive equal opportunity to submit a bid or offer.

Adequate competition cannot be quantified in exact terms, satisfied by the terms "maximum" or "minimum," nor prescribed by a particular procedure. A requirement for maximum competition is administratively impossible if not meaningless, since all potential suppliers can seldom be known. Requiring at least three solicitations or three responses serves as a statement of purpose but at times can discourage seeking competition beyond this minimum. And adequate competition does not necessarily result from contacting only the firms on the bidders' list, or from public announcement of intended purchases. A critical ingredient is that purchasing personnel maintain an awareness of the need

for and value of competition.

Procedural requirements such as maintaining lists of qualified bidders categorized by classes of commodities and services and giving public notices of Invitations for Bids and Requests for Proposals are helpful in obtaining competition. They need to be supplemented, however, with an understanding on the part of the purchasing staff that adequate competition means seeking responses from known qualified suppliers consistent with the size and nature of the intended purchase, while continuously seeking to add to the list of qualified suppliers by locating new sources.

Purchasing officials are justifiably concerned with increased costs of preparing, duplicating, and mailing Invitations for Bids and Requests for Proposals. Arbitrarily limiting the number of solicitations or rotating qualified potential bidders does not address the problem and over the long term can result in higher prices. More precise bidders lists and ingenuity in formatting solicitations can effectively cut costs while maintaining competition.

EFFECTIVE COMPETITION

The nature of effective competition varies with the item or service being purchased. If the item or service is to meet the purchaser's design and will therefore be essentially identical from supplier to supplier, effective competition requires bids from only a representative group of responsible bidders. Under these conditions, price competition as represented by the inital or acquisition price is the prevailing competitive element.

If the items are to be produced according to the designs of suppliers, and are not essentially identical in make-up and performance, as in the case of many commercial products, effective competition necessitates soliciting and receiving offers on the different brands available in the market. Under these conditions, competition exists between both products and prices, and economy based on price/performance evaluation of the competing items is the dominant competitive element.

In the procurement of services, and where services are needed in connection with the purchase and use of a product, effective competition requires criteria for the determination or evaluation of the capabilities of bidders or offerors to perform the services called for.

IMPEDIMENTS TO COMPETITION

Restraints upon competition may come from three general directions—from purchasing policy and practices, from law or government regulation, and from activities on the part of bidders and suppliers. The several kinds of restraints are identified here, with some discussed in more detail in other chapters.

PURCHASING POLICIES AND PRACTICES

All public purchasing programs need to examine and monitor their operations with respect to practices which impair or discourage competition. Many practices directly or indirectly affect fair competition, which can be compromised unintentionally and in the belief the public interest is being served. For example, a state advertised for contracts to furnish dairy products to hospitals that were located variously across the state. The Invitation for Bids called for prices to be submitted separately for each institution, stating or implying that each would be awarded separately. One bidder grouped two of the institutions, offering a price applicable to both locations which was lower than the combined individual low bids for each, but was higher than the low bid on one of the locations. Award was made "in the best interest of the State" to the bidder who grouped the two institutions. A protest was filed by the bidder who submitted the low bid for one of the locations and was upheld by the courts, ruling that the "best interest of the State" lay in requiring the bidders to bid as instructed, and that it is not fair to change the rules after the scores are posted.

Policies and practices should be analyzed for their effect on competition and for intrinsic fairness. Among practices needing such scrutiny, as reviewed more fully in subsequent chapters, are those relating to:

- Restrictiveness of specifications. Undue restrictiveness often can be eliminated by specifying performance requirements instead of design characteristics or similar detail.
- Letters of intent. When a using agency or central purchasing issues a letter of intent to a vendor, prior to bidding and award, it gives an unfair advantage to that vendor in the bidding process both as to early delivery and as to implied if not actual preference for his product.
- Unlimited multiple awards. Experience has long demonstrated that unlimited multiple awards lessen both price competition and the duty of central purchasing to make competitive product comparison and performance/economy determinations.
- Extending and renewing contracts. If extension or renewal is based upon mutual agreement between the jurisdiction and the contractor, courts see it as allowing a supplier to negotiate without competition, and avoidance of requirements for competition. Except in cases of emergency or other conditions where competition can properly be waived, the right to extend, renew, or buy additional quantities under a contract should be at the exclusive right of the government.
- Most-favored-customer pricing. The use of most-favored-customer pricing clauses has the effect of setting artificial floors on prices and of fixing prices at one level. It is anti-competitive and self-defeating.
- Permissive use of purchase contracts. Allowing government units and agencies to order under contracts

arbitrarily or capriciously undermines the integrity of public contracts. All parties eligible to obtain their requirements under a purchase contract should be committed to do so at the time of solicitation and be obligated by the award.

• Slow pay. When a jurisdiction fails to pay invoices on time, the cost of borrowing to the vendor discourages competition and may preclude participation by small business.

Public purchasing officials should be aware of possible actions on their part which could be construed as restraint of trade or otherwise as antitrust violations. This is a complex area of law which has not yet been fully examined, but possible violations could involve such things as purchasing officials of different jurisdictions adopting, as a group, standards or specifications which rule out certain products, or agreeing not to do business with a particular firm. This entire question has been further clouded by a 1982 United States Supreme Court decision holding that actions of political subdivisions of states can be subject to antitrust scrutiny unless the subdivisions have been expressly provided immunity from those activities by state legislation.

LAW AND GOVERNMENT REGULATION

Laws and government regulations that impede competitive bidding increase or decrease according to the times. During the 1950s so-called "fair-trade laws," under which manufacturers were permitted to fix resale prices, prevailed in most of the states and were responsible for widespread identical bidding. In some instances they allowed the effective control of prices of entire industries, such as scientific and laboratory apparatus and audio-visual equipment. In states without fair trade laws, or which provided exemption for purchases by government agencies, such pricing was unlawful. Public purchasing officials and public attorneys established programs in the early 1960s for reporting identical bids, and with the help of consumer groups the laws were eventually declared unconstitutional or repealed. While this was taking place, however, fair-trade advocates sought to have a similar federal law enacted under the label of "quality stabilization," which was narrowly defeated in the Congress.

A long-standing problem that can affect prices adversely stems from the Robinson-Patman Act, which amends Section 2 of the Clayton Act and makes certain kinds of discriminatory pricing unlawful. The effect of this upon government purchasing could be much the same as that of resale price maintenance, or price fixing, and the substantial weakening of laws requiring competitive bidding. Prevailing legal opinion, however, is that Robinson-Patman does not apply to government contracts, although suppliers from time to time may use it as a reason for seeking to establish and maintain a set of published "government prices."

Beginning in the 1960s, state purchasing officials spoke out against in-state preference statutes, under which monetary preference in the form of a percentage of price must be given to bidders located in the state or to goods produced within the state. Typical of all barriers to free competition, this results in benefits for a few at the expense of the general public. A number of these laws were repealed or invalidated in the mid-1960s when the Commonwealth of Pennsylvania saw fit to enforce a unique statute which provides that Pennsylvania state government cannot buy goods produced in or from bidders located in a state which discriminates against Pennsylvania businesses or products. Currently, however, there appears to be a new trend toward an increase in in-state preference laws.

Historically, many city and county governments have had policies or ordinances which give preference to resident suppliers.

The force behind resident preferences in public purchasing is political. As a matter of economics, the practice is a subsidy that is costly to the taxpayers. As a matter of law, the practice may be a violation of the constitutional prohibition against interstate tariffs. As a matter of public purchasing policy, the practice discourages competition and weakens the principles of competitive bidding. Public purchasing officials remain opposed to resident preferences except where no sacrifice or loss in price or quality would result.

All states and the federal government have regulatory bodies which exercise controls over the operations and prices of certain industries and services. Most common among them are transportation utilities, dairies, and insurance. In some of these, monopolies are granted. Wherever these kinds of regulations operate, the normal processes of competitive bidding are nullified.

Where purchasing statutes and rules fail to provide for confidentiality of certain kinds of information, or where open records laws prohibit confidentiality, there can be a barrier to competition. Many prospective bidders consider some information about their financial condition and about characteristics of their products, manufacturing processes, and other technical data, which purchasing may need for evaluation purposes, to be privileged information or trade secrets. Unless the purchasing office has authority to maintain confidentiality of certain kinds of information, companies often will not supply it or will not bid at all. Law should recognize that public competitive bidding should not be used as a means for firms to obtain information about competitors not otherwise normally available, and should provide for limited confidentiality within the purchasing operation.

In authorizing confidentiality of data, either law or rule should require that the decision as to data to be so treated shall rest with the chief purchasing officer, not with the firm which submits the information.

A few jurisdictions have a type of law or rule that acts as a combination resident-preference and most-favored-customer pricing practice. In essence it provides that if a low bid is submitted by a non-resident firm or on a non-resident product, award may be made for purchase of a resident product at the same or lower price. Action of

this kind is a deterrent to competition, violates fundamental principles of competitive sealed bidding, and should not be permitted.

In view of costly and harmful effects, though not intended, that legislation can have on the public contracting program, it is beneficial to have a method whereby central purchasing can routinely be informed of proposed legislation or administrative policy that will have an impact on business, so that it has opportunity to offer comments as to any effect the proposed policy or legislation will have on the purchasing process.

ANTI-COMPETITIVE PRACTICES BY BIDDERS

The principles and rules of public contracting are predicated on a competitive market. Yet, purchasing officials have a formidable task in seeking to assure that competition for government business is free from anti-competitive actions on the part of sellers. Unlike government decisions which are made or announced publicly, suppliers' decisions to act in restraint of trade are illegal and are made secretly. They are extremely difficult to detect, and even when suspected on the basis of credible evidence they are difficult to prove in a court of law without the assistance of a witness who participated in and is willing to divulge the actions. Two highly useful handbooks to help public purchasing officials deal with anti-competitive practices are *Impediments to Competitive Bidding,* published by The Council of State Governments in 1963, and *Government Purchasing and the Antitrust Laws,* published by the National Association of Attorneys General in 1977.

In a free enterprise economy, a business depends upon profit not only for health and growth, but for survival. The necessity and quest for profit lead to the desire to control the amount of goods or services that are available, exclude competition, and fix prices. Anti-competitive activities are likely to result in criminal or civil action upon discovery. Purchasing officials should seek the advice of counsel in attempting to resolve antitrust problems, and to the extent appropriate obtain the help of the offices of the state and the United States attorneys general.

Federal and state antitrust laws are intended to protect the market from price-fixing and other restraints of trade and from monopoly power. Restraint of trade includes numerous forms of agreement or conspiracy to divide the market among the parties or to set prices at artificial levels.

Oligopoly

Oligopoly is a condition under which a few sellers can control the market for a particular product or type of product. It can be found in a wide variety of product areas, such as scientific apparatus and instrumentation, business equipment, and pharmaceuticals. Depending upon individual market strength, these sellers can exercise commanding influence over product specifications and the terms and conditions of conducting business. Agreements or conspiracies among such sellers have the effect of monopoly.

A strong movement at the outset of the 1980s which has accelerated the pace and number of corporate acquisitions and mergers suggests the incidence of oligopoly is increasing.

To the public purchasing official, one of the most burdensome effects of oligopoly is the effort of sellers to dictate the terms and conditions of doing business, and refusal to alter or modify them or the company policy on which they are based. This is often accompanied by contentions of the sellers that competitive bidding is somehow anachronistic, and by their efforts to encourage purchasing practices that are loose, if not illegal, such as negotiated "schedule contracts" and "unlimited multiple awards." Some dictated contracts go so far as to abrogate the basic vendor warranty established under the Uniform Commercial Code; i.e., that the merchandise is suitable for the ordinary purpose for which it is to be used.

In facing these problems, purchasing officials are frequently forced to compromise the public interest, and they should press legal authorities to investigate for antitrust violations. In addition, they should urge their professional associations to go on record sharply opposing such tactics. In their individual responsibilities, they should insist upon competitive bidding, modify requirements where possible to admit additional products, and continuously search for new sources of supply.

Identical Bids

Identical bidding is the most obvious form of non-competitive pricing. Since the repeal of fair trade laws it is not as commonly encountered as it was for many years. Identical bids may result from a number of causes. One is geographic pricing, usually based on equalizing transportation charges to meet competitors' delivered prices. These pricing systems may involve: calculating delivered prices from specific set points, such as major manufacturing areas or the location of the vendor closest to the buyer; charging one price within a geographic zone, which may comprise several states or only a part of a state; or charging one price throughout the United States.

Other identical bidding comes about where several distributors of the same manufacturer's products adhere to price maintenance agreements, such as exclusive distributorships, or follow agency agreements whereby distributors serve as the manufacturer's agent, receive the manufacturer's goods on consignment, and quote the selling price dictated by the manufacturer. Purchasing officials need to be familiar with the market and pricing practices of a given product to accurately analyze bids and determine the forces which are operating to cause non-competitive pricing.

If bidders refuse to lower prices below a certain level

because they claim the Robinson-Patman Act requires them to offer the same prices to all customers, the purchaser should inform the bidder of the U.S. Attorney General's opinion that the law is not applicable to government contracts. (See *Federal Trade Regulation Reporter* (1961), Chicago: Commerce Clearinghouse, Inc., par. 3275.) This interpretation was confirmed in 1981 by a U.S. Court of Appeals.

A practice that encourages a single government price at an artificially high level is use of a most-favored-customer pricing clause, particularly by the Federal Supply Service of the General Services Administration. Though sales to state and local governments technically are excluded from the effect of the clause, this fact is not adequately made clear to vendors. Evidence is overwhelming that the clause operates as a deterrent and impediment to competitive bidding.

Identical bidding is not always the result of conspiracy or economic power. It can be caused by government price regulation, state and federal, or by administrative practices. And it can occur by chance or coincidence. When it is a result of agreement, however, it will remain a viable anti-competitive tactic only as long as the method used for making awards divides the government's business in a manner that is satisfactory to the conspirators. Even bidders who are not part of an anti-competitive conspiracy may detect that the government's business will be divided among them when low identical bids are submitted, and may tacitly develop a system whereby they submit low identical bids. Consequently, all identical bids may be considered the sign of a possible anti-competitive conspirarcy or the seeds of such a conspiracy; but whether conspiratorial or not, the effect is essentially the same. Methods for combatting identical bidding will be discussed under "Countermeasures."

Resale Price Maintenance

A manufacturer may agree with his distributors and dealers, or require them by contract or as a condition for carrying the item or line of merchandise, to sell the item at a price set by the manufacturer. This form of agreement is illegal if the distributor or dealer has title to the item.

Establishing a resale price is not illegal if the distribution outlet is owned by the manufacturer, or if the sale is through his own employees. Legality is questionable where the manufacturer sells through an independent distributor or dealer but furnishes the merchandise on consignment, retaining title until purchased by a consumer. Resale price maintenance can cause identical bidding if two or more manufacturers have agreed on the resale price of a like item or if several dealers are bidding on the same brand. Any appearance of resale price maintenance should be investigated. It is likely to involve an agreement that is a violation of the Sherman Act and of the state antitrust statute as well.

Collusive Bidding

Wherever collusive forces are working in the market, the objective of the conspirators is almost always to divide the market among themselves. In public bidding, direct division of the market is usually sought in one of three ways: rotating low bids, allocating business according to customers, or allocating business by territory or geographical location. It is virtually certain that a great deal more of this takes place, at high cost to the taxpayer, than is known or suspected.

Some industries seem to have a historical bent toward these activities. Among them are the bakery industry, electrical manufacturing and contracting, and asphalt suppliers. All have gone through significant antitrust cases.

The newest large-scale revelations of collusive bidding are in the field of highway contracting. Grand juries are being impaneled, indictments returned, and convictions obtained steadily on a state-by-state basis, with evidence that the bid rigging is a nationwide practice. Evidence further indicates it has been widespread for some 25 years or longer.

The heavy cost of antitrust violations, in money and in damage to the purposes of public contracting, cannot be accurately calculated.

COUNTERMEASURES

Combatting anti-competitive practices requires perception, motivation, and follow-through. The work can be separated into several areas. One is to seek correction of impediments to competition that stem from current purchasing statutes, rules, regulations, philosphies, and practices or procedures. Another is to inculcate in purchasing personnel the spirit of fostering adequate, effective, and fair competition.

In the matter of anti-competitive activities on the part of bidders, purchasing officials need to be more discerning and take more initiative. Apparently many purchasing officials feel the attorney general or other public counsel have all the responsibility for gathering evidence for antitrust actions, and the purchasing office should supply information only when it is requested. Some purchasing officials inform the attorney general when they suspect collusive actions, but not many do so with adequate documentation. In turn, the attorney general needs to act forcefully. Antitrust law is tedious and time consuming and very few states have developed strong programs. It is an area that demands more attention and effort by purchasing and legal authorities alike.

The more evidence there is that a violation of law has occurred, the more likely enforcement authorities will allocate resources for investigation. With respect to anti-competitive activities, the purchasing official has raw data, and although a violation may not be apparent as the data are generated, it is in the interest of the competitive bidding process that the material be developed

and provided to appropriate authorities in a form that can be analyzed, and violations can be determined.

Identical bidding can be opposed effectively by actions of purchasing officials. When bids are received which are unsatisfactory due to anti-competitiveness, the purchasing statutes and rules should provide central purchasing with substantial flexibility to make awards in a manner to discourage such bidding. Some methods used frequently by public purchasing programs in making awards of tie bids should be discontinued, such as rotating awards, drawing lots, or flipping a coin; these play directly into the hands of the identical bidders whose purpose is to have the government's business divided among them.

Instead, central purchasing should be authorized by law to make awards "on any reasonable basis, subject to governing rules and regulations, intended to prevent identical bidding," and in instances where that does not provide a solution, "to reject all bids and negotiate a more favorable purchase."

Written guidelines should be developed setting forth procedures and techniques to be used under this grant of authority. The following methods of dealing with the problem have been used successfully:

- Determine which of the low identical bidders submitted the most technically correct bid, or whose past performance has been superior. Make the award accordingly, and make subsequent awards to the same bidder as long as identical low bids are received. This procedure eliminates the government's complicity in the anti-competitive scheme because the market is not divided among the identical bidders. The strength of this method is that it gives the other bidders economic incentive to submit competitive bids, and the Attorney General of California has ruled that such continuous awards represent award to the low bidder because costs are involved in changing suppliers.
- Circumvent the effect of price maintenance agreements by inviting bids on a package that includes price-maintained items and non-price-maintained items. Awards are then made to the bidder who submits the lowest price for the total package. Under this type of bidding suppliers frequently can lower their bids on items that are not covered by agreement by an amount that reflects a discount on the price-maintained items.
- When identical low bids include delivery charges, make the award to the identical bidder located farthest from the delivery point and who has the highest transportation cost. (In multiple delivery point contracts this method should not be used to the extent it would divide the market among the identical bidders.)
- Reject all bids and issue a new Invitation for Bids with a cover letter stating the previous bids were identical and unacceptable, referring specifically to inapplicability of the Robinson-Patman Act and citing any state or federal law that may be pertinent to the particular instance.
- Purchase seasonal items during the off-season. Some purchasing agents have found that identical bids tend to be submitted on some types of items during the time they are in greatest demand.

Where identical bids are received from firms both within and outside the jurisdiction, it is acceptable to make the award to the resident bidder, who in fact can be considered to be the low bidder due to some indirect taxes, at least, accruing to the jurisdiction from the award. Where the tie bidders are within the jurisdiction, as a general policy the most effective method is to make the award continuously to the same bidder if pursuit of legal antitrust measures is not practicable.

DETECTING CONSPIRACY

Anti-competitive practices can be cleverly concealed. Conspirators hide their actions by agreements that take several forms. There have been agreements to sell items at the same price, to use intricate formulas to determine the price each conspirator will bid, to follow coded communications on price changes, to pre-determine the contents of conspirators' bids, and to refrain from bidding on certain contracts. Some anti-competitive agreements, such as using formulas to set the amount to be bid, may give every appearance of actual competition. A notable example of this, involving 29 of the largest manufacturers of electrical equipment, was brought to light in the early 1960s. All of the companies entered guilty or no contest pleas. Other types of agreements may result in bid prices that fall into a distinctive pattern, but unfortunately for the purchasing official who is attempting to detect collusion the same result may occur from practices which usually do not violate the letter of the law. In some product areas, for example, suppliers will use follow-the-leader pricing and make the same price changes at approximately the same time, based on whatever the dominant seller does.

The purchasing official's best means of detecting anti-competitive practices are by monitoring the bids submitted, keeping eyes and ears tuned for unintentionally disclosed indications that an agreement is in effect, and using his knowledge and insight of costs, products, and markets to recognize suspicious activity.

Establishing a Bid-Award History File

Monitoring the bidding process requires systematic, long-term effort. In setting up a record-keeping system to assist in detecting collusion, bid-award data should be gathered and recorded in a usable format which considers the realities of the market involved. The number of items encompassed by any one analysis should be determined by the specific market in which evidence of collusive bidding is being sought.

The bid-award record should show, at a minimum, the suppliers that were solicited, the amounts bid, the numbers of no-bids and no responses received, and the successful bidder. In a multi-product market and for indefinite quantity term contracts (e.g., pharmaceuticals), the information should be modified to show the

estimated value of the award that each bidder received, as well as the value of the total award, to reveal patterns in the percent of the market that each bidder received. If there is a predominant item in a multi-item market, as might be the case where 40 percent of the total drug expenditures is spent on a single item, keeping a separate file on that item would be important. In fact, in a multi-item market, patterns in awards could probably be detected by charting several key items individually. An example of a bid-award history file is shown in Figure 1.

Maintaining the Bid-Award History File

With proper planning, a bid-award history file can be easily maintained. Initially, commodity codes can be refined so that when an award is made, the proper bid-award history may be found quickly by the commodity code reference. Work-saving devices can be used to reduce manual copying, the most time-consuming element; for example, bid forms (or additional forms) for bidders to fill out can be designed in such a manner that bid-award history file is produced by assembling and photocopying them. Most advantageously, after a bid-award file system has been developed and tested, it can be easily computerized, and software packages are available for analyzing the data.

Analyzing Bid-Award Data

A bid-award file should bring together the information on awards for one product area or business area so the data can be studied for patterns that may point to anti-competitive conspiracies. For example:

- Patterns in rotation of low bids among competitive bidders can be detected. If bidders are involved in a collusive anti-competitive agreement, the record might show that although the bids appeared to be competitive for each individual procurement, the awards fell into a suspicious pattern (e.g., B-C-A; B-C-A, as shown in Figure 1).
- Patterns in geographical distribution of awards can be detected for commodities for which awards are made by region. A map can be used to portray such patterns by designating a color for each bidder and filling in the county or region affected by a contract with the color of the successful bidder.
- No bid responses from solicited bidders may reveal a pattern which could be a signal that suppliers have agreed to take turns in bidding on contracts. This practice may be more likely where items are available from only a limited number of suppliers.

Other suspicious patterns can be detected through the purchaser's knowledge of the market. If normally there were a substantial markup from wholesale to retail prices for an item, but if the bidding in normal market conditions repeatedly resulted in low bids that were only slightly below retail prices, further inquiry would be in order. The bid-award history also may mark the approximate time a conspiracy began by showing a sudden change in bidding patterns; e.g., all suppliers might change their pricing policies from one contract to the next, or identical low bids might begin to appear consistently where previously this had not been the case.

When identical bids are received, the purchasing office

FIGURE 1
Sample Bid-Award History File
ITEM X

Vendor	Costing Data	1976	1977	1978	1979	1980	1981
A	Unit Price ($)	42	41	40+	43	43	41+
	Est. Cost ($)	4,200	8,200	12,000	17,200	21,500	24,600
B	Unit Price ($)	41+	42	42	41+	41	43
	Est. Cost ($)	4,100	8,400	12,600	16,400	20,500	25,800
C	Unit Price ($)	43	40+	43	42	40+	42
	Est. Cost ($)	4,300	8,000	12,900	16,800	20,000	25,200
D	Unit Price ($)	47	47	46	46	45	NB
	Est. Cost ($)	4,700	9,400	13,800	18,400	22,500	——
E	Unit Price ($)	NR	48	47	47	46	45
	Est. Cost ($)	——	9,600	14,100	18,800	23,000	27,000
F	Unit Price ($)	NS	NS	48*	48	47	NB
	Est. Cost ($)	——	——	14,100	19,200	23,500	——

NS = Not solicited
NR = No response
NB = "No bid" response
+ = Successful bidder
* = Bid from bidder who was not on bid list at time of solicitation

can focus on certain factors in the bid-award history file for indications of collusion.

- *Commodity and market analysis.* Is there any legal basis for the identical bids? Are all bidders offering the same manufacturer's product? (If so, the specifications might be unduly restrictive, or there might be a resale price maintenance agreement between a manufacturer and the distributors.) Is there some peculiarity in the present market, such as temporarily limited sources of supply, that has affected the bidding?
- *Number of bidders.* How many bidders responded to the Invitation for Bid? Are the identical bids the only ones received? If several bids were received and only two were identical, one might correctly assume they were identical by coincidence unless the identical bidders are the dominant suppliers in the market. Additional analysis and observation of future bidding on this item are indicated. If two or three manufacturers are represented, collusive price maintenance agreements are a possible cause.
- *Number of items involved.* Does the bid relate to a single item or delivery point, or are there numerous items and delivery points? If multiple delivery points are involved, are the bids identical for each? Are unit prices identical for each item?
- *Historical bid prices.* Are there discernible trends or patterns? Has there been a history of identical bids either for the items involved or with the bidders involved? If identical prices were bid in the past, were awards made by a method that may have encouraged, rather than discouraged, continuation of the practice? What changes in method of award could stimulate competitiveness?
- *Price analysis.* As appropriate, an independent price analysis should be made as a test of the reasonableness of bids received. Catalogs, market surveys, prices being paid by other users, and similar indicators should be considered.

The conclusions reached from such analyses will help the purchasing official decide actions that purchasing can take to combat the practice and can provide useful information for the attorney general's or public counsel's office.

A bid-award history file offers a unique asset that facilitates analysis and helps to determine if there is evidence of collusion. It can also present other information beneficial in managing the purchasing system. For example, the number of responses to bid invitations and the degree of competition over a period of time are readily apparent, as is the incidence of bids from suppliers who were not on the bidders list. Price trends for various items are indicated.The frequency of awards to other than the lowest bidder and the items on which this occurs will be shown. In addition, making slight variances in the format of the bid-award history file can supply other important information to serve management needs.

COORDINATION BETWEEN CENTRAL PURCHASING AND THE ATTORNEY GENERAL

Combatting collusive bidding practices calls for an effective working relationship between the central purchasing and the state attorney general's offices. If the attorney general becomes involved in an antitrust suit, he will need, as evidence, records of past bidding patterns and practices. The following information, important in an antitrust suit, is generally found in historical purchasing records: public notice of the proposed purchase, names of the bidders who were solicited, bidders who responded, the price each bidder offered, and the name of the successful bidder.

The attorney general should have a voice in determining the number of years purchasing records are kept in order to provide adequate historical data needed as evidence of collusion. In addition, the attorney general should work with central purchasing on a plan for retrieving the information without unduly disrupting purchasing operations.

Because actions taken by the attorney general often have a salutary effect on all purchases, there should be a format and system established whereby purchasing officials can report to the attorney general instances of suspected collusive bidding. Communication from the attorney general's office to the purchasing agents through seminars has proved successful where instituted. The seminars examine antitrust laws and how they affect public purchasing, how to deal with suspected antitrust violations, and what cooperative procedures are possible between the purchasing function and the attorney general. The National Association of Attorneys General publishes an *Antitrust Report* which summarizes state antitrust cases, their current status, and their final outcome. This report is an excellent source of information for public purchasing officials.

The United States Attorney General's office also is deeply interested in possible collusive bidding. In a program intended to discourage identical bidding in all levels of public purchasing, state and local governments are requested to join federal agencies in submitting a brief form (DJ-1510) to the Antitrust Division of the U.S. Attorney General's office when identical bids are received in the competitive bidding process for line items having a bid value greater than $1,000. The information received from these reports is compiled to aid the U.S. Attorney General in identifying conspiracies that violate federal antitrust statutes. The information is also published annually, in a report entitled "Identical Bidding in Public Procurement," in order to discourage the submission of future identical bids. Similar reporting programs within state and local governments would be useful. The reports would advise the attorney general, city attorney, auditor, inspector general, or other appropriate government personnel of suspicious bidding practices, identical bids, and evidence of collusive practices to which purchasing can direct attention.

COORDINATING STATE ANTITRUST EFFORTS

Long-range improvements in combatting collusive bidding will be the systematic accumulation of data according to states, regions, and the entire nation. Computerized experiments of this kind have already begun and the technology and applications can be expected to grow. In the process, state and local government purchasing programs will need to be able to generate data adaptable to specific formats and computer compatabilities.

A ruling by the U.S. Supreme Court in 1977 has adversely affected the ability of purchasers to recover damages from antitrust violators. In a case popularly known as "Illinois Brick," the Court held that damages may be recovered only from a direct seller, not for example from a manufacturer if the purchase is made from a distributor or dealer. Efforts to date to overcome the effect of the decision have generally not been effective. The ruling continues to inhibit actions to recover damages, with a final remedy apparently requiring legislation by the Congress.

Also, purchasing officials need to be alert to a new movement by some economists and business interests to proclaim that antitrust laws are obsolete. The argument is that the natural marketplace provides sufficient competition to prevent excessive pricing, and that prohibitions against combinations and price dictation are not needed. Purchasing experience, certainly, does not support such reasoning.

OTHER COUNTERMEASURES

Varied policies and practices can be employed to assist the purchasing system in countering anti-competitive practices. Many state and local governments require all bidders to submit signed statements that their bids are made independently and without collusion with other bidders. Some systems require separate notarized statements of noncollusion. This serves as an affirmation by the bidder that he has not participated in a collusive or anti-competitive agreement and reminds him of the jurisdiction's concern that the bids it receives be the result of true competition. *Such certifications need to be enforced with specific statutory provisions, such as conspiracy or collusive bidding statutes, which set forth penalties for collusive practices.*

Simple direct action can be one of the best tools for dealing with collusive bidding. For example, a purchasing official who suspected a collusive price-fixing agreement solicited a bid from one of the firms involved soon after a new manager was hired who was not aware of the agreement. This produced an aberrant bid that was a good indication such an agreement did, in fact, exist. When collusion is suspected, concentrated effort to recruit new bidders can achieve realistic prices as reaction to the new competition. Taking the initiative to make inquiries of suppliers who appear to be outside of a suspected anti-competitive conspiracy has provided information which was valuable in taking action against the conspiracy.

Inquiries can be made to determine why a major firm that normally would have bid on a large contract did not do so. If the reasons given are unsatisfactory, if the practice of not submitting bids persists, or if a pattern of several bidders' refraining from submitting bids on successive contracts is detected, the purchasing official should take further action. He could, for example, compare his records of awards with those of his counterparts in neighboring jurisdictions to see if there were evidences of market allocation. Whenever a firm is suspected of refusing to bid because of its participation in an anti-competitive conspiracy, the purchasing office should not routinely remove the firm from the bidders list. On the contrary, it should assure that the suspected firm is always solicited, to create a record of the firm's refusal to bid. This type of information can be useful in any subsequent antitrust action.

An unusual reduction-in-competition problem can arise from antitrust enforcement. When collusive bidding is discovered to be the general practice in a particular industry, as occurred some years ago in the electrical cases and more recently in highway contracting, and the suppliers thereby are found to be nonresponsible, prospective bidders and competition on existing and immediate future needs can be effectively eliminated. The solution to this dilemma is not easy. Experience to date suggests one answer is monetary penalties, individually imposed on each violator in relation to his complicity and the effect of it, as a condition for reinstatement from debarment.

Overall, the strongest deterrent against collusive bidding continues to be active cooperation between alert purchasing officials and an attorney general's office that attacks the problem aggressively.

ADDITIONAL METHODS FOR IMPROVING COMPETITION

Purchasing laws, policies, and rules must recognize that procurement often has to be conducted under abnormal conditions. Collusive bidding and other non-competitive practices are examples. Another area of concern is a market in which a commodity or group of commodities is in short supply and availability and prices are extremely volatile. In such a market, it is difficult, and at times impossible, to use the purchasing procedures geared to a normal, competitive market. There are ways to cope with abnormal markets, but purchasing officials need the authority to apply these techniques lest they violate the law or simply conclude the purchase cannot be made.

To avoid any misunderstanding, it must be made clear that purchases will be made by normal competitive means whenever possible. Unusual market conditions are not routinely a basis for deviating from this principle. In

those cases where it is impossible to follow established competitive bidding procedures, the purchasing actions must be documented to show the condition that prevented it and procedures that were followed. Different means can be employed by purchasing agents to meet different market conditions, and success in their use will vary according to the severity of the market circumstances.

SHORTER TERMS AND DEFINITE QUANTITIES

Term contracting is an accepted way of buying that is widely used in public purchasing. The contracts usually are for a period of one year and frequently are for indefinite quantities. In a tight market, however, suppliers often are unwilling or unable to commit themselves for this length of time, or for indefinite quantities. Some jurisdictions have succeeded in continuing to use term contracting by offering shorter contract periods and/or more definite quantities. Except for additional administrative time, shorter-term contracts usually retain the advantages of the one-year contracts. Using definite quantities poses some problems because estimating exact requirements in advance is often difficult, and underpurchasing or overpurchasing is always a possibility. The former condition can be alleviated by making individual purchases as needed, although prices paid on such spot purchases likely will be higher. If requirements are overestimated, it may be possible to cancel some of the deliveries, particularly in a market where prices are rising. If not, the additional quantities will be subject to additional costs of storing and handling.

PROVISION TO RENEW

Options to renew a contract are sometimes seen as a protection in a market of rising prices; however, this often is not the result. Furthermore, depending upon the manner in which contracts are renewed, the practice could be in violation of requirements for competitive bidding. Any provisions, even though set out in the Invitation for Bids, that would result in renewal by mutual agreement between the jurisdiction and the contractor, renewal at different contract terms and conditions, or renewal at different prices not in accordance with explicit conditions allowing price adjustments, are suspect and are not sound practice. On the other hand, and in keeping with the integrity of the competitive bidding process, renewal of a contract is entirely in order where market conditions warrant and where the Invitation for Bids provides for renewal at the option of the state or local government under the same contractual terms and conditions and at the same price or price basis.

PRICE ADJUSTMENT

In an inflating economy or at any time prices are unstable, price adjustment provisions are a useful means for stimulating suppliers to bid on indefinite quantity contracts without padding or hedging their prices. These clauses provide for price increases and decreases under certain stated conditions. The conditions and procedures must be set forth in the Invitation for Bids, and should be clearly defined and strictly adhered to.

Price adjustment clauses can be governed by different considerations and market factors, and the detailed procedures and requirements can vary from contract to contract. Generally, however, they should specify: the period of time during which the provisions are operative; the conditions under which the clauses may be exercised; the general types of increases that will be considered; the method of determining that a price increase is in order; and the documentation, review, and approval procedures required. Oftentimes, the contracts provide an initial 60 to 90-day period during which the bid prices must remain firm against any increase. The clause can place a limit on the amount by which the contract price may be increased. *In all cases, there should be provision for the jurisdiction to cancel the contract if a requested price increase is not acceptable.* Any request and justification for a price increase should be linked to an indicator, preferably an independent index not controlled by either the buyer or the seller. The nature of the index needs careful examination if it could be subject to falsification or rigging. In some cases, adjustments can be based on the vendor's published prices where it can be shown that any changes apply alike to all customers. In industries where labor represents a major part of contract costs, such as coal, price increases are sometimes allowed based on negotiation of new labor contracts. In any case, price adjustment clauses should provide that suppliers submit necessary data supporting a request for price increase, and the purchasing office should be authorized to evaluate the data with the right to examine the supplier's pertinent books and records, if this is deemed necessary. The clauses should specifically state that no adjustments will be made to compensate a supplier for inefficiency or for errors in judgment, that only valid cost increases will be allowed, and that increase in profit will not be permitted.

As a general rule, price adjustment provisions can be used in complete conformity with the competitive bidding requirements. Overall, when well conceived and properly administered, they can afford a valuable means for attracting greater competition, for effecting savings, and for protection against inflated prices being submitted on bids for indefinite quantity or other types of term contracts.

5. Planning and Scheduling

ESSENTIAL ELEMENTS

Suggested Statutory Coverage

The purchasing statute should:

Direct the central purchasing office to establish and maintain a procurement management information system and a management analytical process based on the information system.

Require using agencies to submit data on requirements to central purchasing, as designated by rule, and grant specific authority to central purchasing to require justification of purchase requests.

Require that central purchasing establish and maintain an ongoing program of consolidation of requirements wherever practical and to use scheduled purchasing and term contracting techniques as appropriate.

Authorize multi-year contracts, subject to availability of funds, specifying that the term of the contract must appear in the solicitation for bids or proposals.

Authorize any type of contract except the cost-plus-a-percentage-of-cost contract.

Require that contracts for rental, leases, and lease/purchase be subject to the regular requirements for competition.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Cover term contracting procedures and practices, including requirements for mandatory use of the contracts and methods of monitoring compliance.

Cover planning and scheduling, relating specifically to the data requirements of central purchasing; i.e., the data needs from using agencies, the scheduling and timing of activities, and the respective areas of authority, responsibility, and liaison.

Recommended Practices

Purchasing should participate in overall government management planning in those areas to which it can bring knowledge and expertise.

Purchasing should employ data from budget documents and surveys of vendors as well as using agency requirements in carrying out planning and scheduling.

The central purchasing information system should be compatible with existing financial management information systems.

Since economy of scale is finite, cost saving analyses should be conducted to determine where volume buying is cost-effective.

Central purchasing should issue guidelines on the applicability of cost principles under certain types of contracts.

Increasingly, government is confronted with the challenge of meeting the needs of constantly changing social and economic environments. Replacing old ways with improved techniques and developing and implementing new programs all contribute to a greater need for thoughtful planning. Emphasis on planning, from both management and operations points of view, is intensified by the growing demand that government at all levels conduct its operations more efficiently and economically. Planning is an essential ingredient for strengthening the management of public resources and obtaining increased value from the expenditure of taxpayers' dollars.

Planning and scheduling relate largely to anticipating future needs, devising programs to meet these needs, and arranging for the acquisition and use of necessary resources. Purchasing needs to be closely involved in these aspects of governmental management and operations.

Unfortunately, purchasing often is seen as exclusively a service agency that can make no significant contribution to management objectives of government. Where this view prevails, purchasing has no opportunity to participate in managerial planning processes. This chapter will demonstrate that management benefits when it obtains information and advice from purchasing, and that purchasing can fulfill responsibilities more effectively as a result of this kind of involvement.

AT THE MANAGEMENT LEVEL

Virtually all decisions made by state and local governments affect purchasing and materials management, and conversely, all purchasing decisions affect program ac-

tivities. Therefore, purchasing should participate in the early stages of management planning. Purchasing can, for example, contribute vital information on forecasting the costs of commodities and services necessary to specific programs. Purchasing's knowledge of market conditions, materials availability, and technological advancements can provide pertinent information important to the feasibility, practicality, cost-effectiveness, make-or-buy decisions, timing, and other planning considerations and objectives.

Similarly, purchasing should be called upon to participate in the planning of buildings and facilities. The design of medical, social, recreational, and administrative centers requires forecasting for the acquisition of operating supplies, furniture and fixtures, fuel, equipment, machinery, and countless additional items. Including purchasing in the early planning stage contributes to the accuracy of projected costs and to developing realistic construction schedules for delivery and installation of equipment and machinery.

Government managers at all levels should learn to draw upon the expertise of purchasing as a part of their planning procedures. In turn, purchasing improves its effectiveness from such involvement by gaining valuable information and insights regarding administrative directions and trends. Long-range plans can be translated into future requirements, workloads can be scheduled more efficiently, and attention can be devoted to acquisition strategies that are most appropriate for current and future market conditions. *Purchasing should have a management responsibility, shared with the central budget unit, to review the validity and suitability of purchase requests and to obtain adequate program information and justification from using agencies. The valid exercise of this function requires statutory or other legal authorization.*

AT THE OPERATIONS LEVEL

Beyond participation in broader management planning, purchasing needs a structured program of planning and scheduling for its own operations. Important to sound purchasing programs, and requisite to a superior one, is systematic decision-making in the timing of purchases, the methods of buying, the types of contracts employed, and the turn-around time for handling agency purchase requests. Day-to-day planning and scheduling are necessary to capitalize on one of the major objectives of purchasing—reducing unit costs by consolidating individual quantities for volume buying. Other economies from volume purchasing are savings in overhead costs by reducing the number of transactions, maintaining interchangeable inventories, and reducing the incidence of emergency purchases.

In times of economic instability and erratic markets, planning and scheduling are effective tools in moderating the effects of market fluctuations and the limited availability of equipment and supplies. When sharp price increases are apparent or shortages are developing, needs can be projected and, with appropriate safeguards, forward buying initiated. Especially careful planning is necessary when product availability becomes so limited that allocations are imposed by suppliers.

THE PURCHASING MANAGEMENT INFORMATION SYSTEM

The central purchasing authority needs continuing information from all using agencies as to what is on hand and how much is needed on an item-aggregate basis in order to carry out orderly and efficient procurement. Information concerning the types of commodities and quantities required gives an indication of the items suitable for buying in volume. This information alone, however, is not sufficient to determine the most economical and practical method of acquisition or type of contract to employ. Pertinent data on usage patterns, current and future market conditions, inventory levels, and warehouse capacities must be analyzed to determine whether particular items can be bought most advantageously as individual purchases under an indefinite quantity term contract—with or without provision for price adjustment—or as a definite quantity scheduled purchase.

Though this broad-based type of information is basic for central purchasing to determine courses of action most likely to result in timely acquisition of commodities at most favorable prices, too often it is not readily available. As yet, only a relatively few jurisdictions have developed information systems which collect accurate data in a format and level of detail that permits meaningful analysis of needs. Historical information necessary to planning decisions (e.g., the number of purchase orders processed and identified by vendor and by commodity, the quantity purchased and dollar volume expended for each commodity, and the amount of the average purchase order) is frequently incomplete or inaccessible. As a result of not having the appropriate information or not having it in a readily usable form, the planning process in many state and local purchasing organizations is inadequate. Much of it must rely on guesswork rather than a well-organized process.

Not all information needed can be acquired from historical data. Planning involves an element of forecasting; consequently, purchasing must depend also on information external to its operations, such as advance notice from using agencies regarding their expected requirements and government-wide budget data. But even when this information is received, it is often in a format unsuitable for effective purchasing use. Budgets tend to be set out in such a general form they are of little use to purchasing as indicators of future commodity requirements. As to other sources, purchasing's accessibility to information is limited when using agencies are reluctant to reveal projected schedules of future requirements for fear of negative administrative or legislative reaction.

Although purchasing statutes may contemplate that purchasing should obtain such information, in reality the power to do so is largely persuasive.

Since both historical data and future requirements are necessary to the planning process, purchasing and using agencies must cooperate in coordinating and exchanging this information. The diversity and volume of commodities handled by purchasing make it impossible to determine requirements, consolidate needs, and select the most effective acquisition strategy without a systematic method of accumulating pertinent information. Unfortunately, some systems, lacking careful planning, concentrate on mere data gathering rather than purposeful management of the information.

Circumstances surrounding availability and accessibility of data can adversely affect purchasing's ability to plan and schedule. The problem calls for *positive statutory language which defines the authority of central purchasing to institute a decision-oriented management information system designed to accomplish purchasing's mission.*

SOURCES OF PLANNING INFORMATION

While state and local governments call upon most of the normally available sources of planning information, in one form or another, there is wide variance in the value of data received and uses made of it.

Using Agency Data

Upon request, or by a predetermined schedule, using agencies can identify items they will need, quantities they expect to order, and the times they will need them, and submit this information to the central purchasing authority. This is done usually according to categories of items that are ordered frequently, such as office furniture, flour and sugar, and maintenance supplies; and the information can be obtained monthly, quarterly, semi-annually, or annually. Based on these data, central purchasing can consolidate requirements and decide whether to seek bids on a definite quantity "schedule" contract or establish an indefinite quantity "term" contract. The quantity size of the proposed contract, current inventory levels, and deliveries yet to be made on current contracts are among factors considered in making the decision.

While such a procedure is usually provided in varying degrees of explicitness by statute or by rule or regulation, it is seldom completely and consistently implemented. Some purchasing laws contain a requirement that on or before a specified date each department shall submit to central purchasing a list of all its estimated needs for designated types of items for the next fiscal year, but in practice, procedures for acquiring information from using agencies often are not well enforced. Purchasing officials need to increase efforts to emphasize and impress upon agencies the importance of furnishing accurate and timely information. One aid in facilitating this is to supply specific, printed questionnaires to the using agencies. Another is to inform agencies of the savings that volume buying can generate. Further, agencies should be reminded that this same information is important to their own management systems. To obtain full cooperation of using agencies, however, central purchasing needs the support of its top management, and this support in turn depends heavily upon the effectiveness of purchasing in keeping its management apprised of its operations. Sometimes the problem is complicated by a number of using agencies served by central purchasing being outside the governmental structure, as in various cooperative purchasing arrangements, or where private, non-profit institutions are involved. In any case, *the purchasing law should direct that using agencies are to furnish necessary information when and in the manner requested by central purchasing.*

Budget Data

Although designed primarily for financial purposes, annual budgets, and particularly those relating to capital outlays, can be formatted to serve as a useful source of purchasing information. If, for example, expenditure codes included commodity codes, purchasing could identify specific supply and equipment requirements. Where the budgetary process is computerized, the entire budget can be purged to sort expenditures for supplies and equipment by commodity code and using agency. This technique would afford purchasing profiles on the types and quantities of commodities to be needed during the coming year. Where systems are not computerized, budgets can still be analyzed to obtain at least broad indications of the general kinds and volumes of purchasing activity which may be expected in the next fiscal period.

Purchasing Management System Data

The first two types of purchasing information focus on agency sources and relate primarily to future needs. Planning future workloads and identifying items suitable for volume purchasing require close examination of historical experience. This information pertains to what, how much, how often, and from whom commodities were bought during prior periods. In the majority of purchasing offices, information of this nature is scattered throughout various bid-award and purchase order files, and retrieval is extremely difficult. Obtaining a profile on a particular commodity can require a complete search of all the purchasing activity. On indefinite quantity or term contracts, records of past activity are not available unless central purchasing issues or monitors orders and releases placed against each contract and, consequently, has accurate information on the quantities of items purchased. Where there is no requirement for using agencies to furnish central purchasing copies of field purchase orders issued under established contracts, or where the purchasing office lacks personnel to maintain systematic records,

purchasing can only ask vendors for sales reports. To the extent this is necessary, data reliability can be enhanced greatly by having contractors furnish copies of their invoices.

One approach to improving the availability of commodity usage data is to build on the existing management information system. Often the issuing of a purchase order involves recording an obligation in the accounting records. Where the accounting system is computerized, the encumbrance/obligation software can be modified to generate cumulative reports on purchase orders processed and to record the details of purchases according to commodity. This type of report can be updated concurrently with postings to the accounting records.

The majority of state and large local government jurisdictions now have data processing capabilities and other resources necessary to develop an automated purchasing information system. Others will do so in the predictable future, and it can be expected that computer terminal networks connecting using agencies to a central processor will greatly facilitate the compilation of data.

Establishing a productive automated purchasing management system is in itself an exercise in precise planning. The central purchasing office must convey to systems and program technicians clear statements of program requirements and must monitor the system development to make certain it responds to these specifications and purposes.

Even with manual systems, modifications can be made to improve the generation of useful purchasing data. Purchasing information by commodity can be collected by filing bid-award documents and purchase orders according to major commodity code groups or by maintaining a cross-index according to commodities. This provides capability to retrieve needed documents and information on a particular commodity without purging the entire file. A commodity profile card can also be established as a record of the important elements of each award. The following illustration depicts one of many workable formats that can be used.

Obviously, use of this technique will depend on the volume of purchasing activity for particular items. The illustration is an example of an item with a low level of activity. In cases where hundreds of orders are placed against a contract for a particular item, this system is less feasible.

Survey Data

Another method of data collection relates to the refinement of information obtained from the methods just described. After assembling using agencies' numerical requirements, the central purchasing office must determine if and how the items can be advantageously bought in volume. A helpful procedure is to conduct using agency surveys, usually in the form of questionnaires, asking at what times the items will be needed over the next fiscal period, the delivery points involved, the levels of performance required, and the salient specification characteristics needed. Information gathered by such surveys assists purchasing in assessing whether the items have a multi-agency application and whether developing a standard specification would be practical. Although volume buying ordinarily is advantageous, suppliers sometimes may not be able to bid attractively on a large-scale contract. Production schedules, limited warehouse and distribution facilities, and restricted availability of materials and manpower are possible barriers. For this reason, central purchasing should also survey suppliers to determine their capabilities for meeting supply, delivery, and distribution requirements, as well as their ability to respond to proposed standard specifications.

COST-SAVINGS ANALYSIS

After getting information on historical activity and future estimates and canvassing using agencies and vendors, purchasing can perform a cost-savings analysis before determining a final course of action. This is indicated because volume buying, when compared to spot purchasing, does not invariably result in a net savings.

COMMODITY PROFILE CARD
COMMODITY X

Vendor	Award Date	Bid Award File No.	Qty.	Award Amounts	Requesting Agency
A	6/25	28919	50	$2,500	Transportation
B	7/04	29101	100	4,500	State Police
A	8/02	29256	45	2,000	Auditor
C	8/05	30421	30	1,500	State University

Certain commodities have fairly stable prices which are not materially affected by changes in purchasing patterns. Additionally, volume buying initially requires more planning and coordination than an individual purchase and, consequently, added processing costs must be considered. By their nature, many items, varying from a cafeteria serving counter to an electron microscope, require individual purchases. Particularly for low-priced items, evaluation should be made as to costs of purchases handled on either a spot or a consolidated basis by central purchasing, savings resulting from eliminating repetitive bids and quotations, and the overall costs of purchases made by using agencies through informal quotations. In this way the anticipated benefits generally associated with volume buying can be determined with reasonable accuracy.

EQUIPMENT AND SUPPLY ITEMS IN CONSTRUCTION CONTRACTS

An application of planning and scheduling frequently overlooked is involvement on the part of central purchasing in deciding when items can be obtained most advantageously by including them in or deleting them from a construction contract. If deleted they are "furnished by the owner," either through separate bids handled by the purchasing office or by ordering them under existing term contracts.

In addition to movable furniture, office machines, and miscellaneous supplies customarily not included in a construction contract, a list of items that potentially may be purchased more economically apart from the building contract shows much diversity: venetian blinds, lighting fixtures, incandescent bulbs and fluorescent tubes, water coolers, radiological apparatus, kitchen and food service equipment, auditorium seating, carpet, science and home economics cabinets, closed circuit television, library furniture, and so on.

In considering whether items might be included or not included in a construction contract, two principal factors come into play—economy and convenience. Convenience may be served by including equipment in the general construction contract and having overall coordination and responsibility for the project fall on one contractor. Economy is usually served by taking separate bids on certain kinds of requirements in a manner to bring about greater competition both as to products and prices offered.

When included in a large construction contract, these items take on a minor significance. Specifications often are written such that all construction contractors bidding on the project offer the same brand, e.g., a particular make of an auditorium chair, based on an identical price received from the manufacturer or distributor. This eliminates product competition. Where, for example, a chief radiologist has a strong preference for a certain brand of x-ray equipment, the architect's specifications may be written to limit competition to that brand, or the mounting devices may be designed or laid out so that only the preferred brand can be installed. Therefore, although six or eight competing contractors submit bids for the project, in actuality no product competition and relatively little price competition is received. A further cost is incurred by the contractor adding a profit factor to the price of the equipment.

When bids are taken by the purchasing office, however, the requirement and the nature of the specifications receive more visibility. Bids are invited from a wide group of prospective suppliers, and greater competition and lower prices usually result.

To realize these potential savings, *a statutory provision is needed authorizing central purchasing to determine whether items should be included in, or purchased separately from, a construction contract, with rules or regulations required to provide a procedure for implementing the statutory authorization.*

TYPES OF CONTRACTS

For purposes of discussion and better understanding, it is necessary to distinguish between methods of purchase and types of contracts. There are several methods of making purchases and many types of contracts, and there are certain relationships between the two. The methods of purchase fall roughly into four categories: competitive sealed bidding, which also covers two-step or multi-step bidding; competitive negotiation; sole source or non-competitive negotiations; and small purchases. These are treated elsewhere, and particularly in Chapters 8 and 9, including their application to emergency purchases.

Types of contracts can be classified in two ways. *One is by quantity*—in a general sense, every contract is for either a definite quantity or an indefinite quantity. Purchasing professionals characteristically favor definite quantity contracts as affording more realistic prices and delivery commitments. Recent data show that states make purchases predominantly by definite quantity contracts, and that the practice is increasing.

The other means of classifying contracts is by price or cost, such as a fixed price contract or a cost-reimbursement contract. These involve numerous variations, including: fixed-price contract with price adjustments; firm fixed-price contract; cost contract; cost-plus-a-percentage-of-cost ("cost-plus") contract; cost-plus-fixed fee contract; fixed-price cost incentive contract; performance incentive contract; time and materials contract; and others.

In practical terms, state and local governments use relatively few of the price- or cost-type variations. Definite quantity purchases are usually firm fixed-price contracts, with construction and public works contracts having special provisions for modifications and price changes. Indefinite quantity ("term") contracts are fixed-price contracts, often with provisions for price adjustments downward, or upward and downward. Cost-

plus-a-percentage-of-cost contracts are inadvisable and seldom used, and time and materials contracts usually are employed only for small jobs. There are decided advantages to the use of cost-plus-fixed fee contracts for some kinds of work and to incentive contracts under certain conditions, and it is reasonable to expect that use of both of these types will increase. It is important that the purchasing statute address the types of contracts; that the use of any type of contract be authorized except a cost-plus-a-percentage-of-cost contract, which should be specifically prohibited; and that rules and regulations be adopted establishing guidelines governing the use of the different types. Planning and scheduling need to be integral to many of the decisions leading to the selection of a contract type.

VOLUME PURCHASING: TERM CONTRACTING AND SCHEDULED BUYING

As already noted, aggregating the needs of using agencies necessitates planning and scheduling. In the purchase of equipment, materials, and supplies, indefinite quantity term contracting and schedule buying are the means widely used by state and local governments to consolidate requirements for volume purchases.

Term contracting, broadly defined, is a purchasing technique that establishes a source or sources of supply for deliveries to be made over a period of time. Within this definition are a number of possible arrangements:

- Definite quantity for a definite period.
- Approximate quantity for a definite period.
- Indefinite quantity for a definite period.
- Indefinite quantity for an indefinite period.

Ordinarily, however, term contracts are thought of as approximate or indefinite quantity arrangements and in this context are referred to variously as "open-end contracts," "blanket contracts," "requirements contracts," "blanket orders," "purchase agreements," as well as the more general expression "term contracts."

All states and most local governments use indefinite quantity contracts, some to a much greater degree than others. A few states report up to 90 percent of their purchases by dollar volume are made under indefinite quantity contracts, while others report figures as low as 5 percent.

Term contracting can provide certain advantages to both buyer and seller. For the seller, it represents business in volume and an opportunity to secure an increase in sales that will be spread over a period of time, permitting the successful bidder to plan ahead. He can view such a contract as a sort of insurance or asset which can facilitate financing arrangements. Term contracting also spares the supplier the administrative time and expense of repeatedly preparing and submitting quotations and bids. It can reduce sales expense and permit redirection of sales efforts. In addition to tangible benefits, there is frequently an esteem associated with being the successful bidder on a contract of this type, which in turn stimulates competitive pricing.

Many of these same advantages can be realized by the purchaser. He can reduce administrative costs by avoiding the highly repetitive activities involved in preparing and issuing Invitations for Bids on the same or similar items and receiving, handling, and evaluating the responses. Widespread use of term contracting permits handling larger volumes of purchases with fewer personnel. Numerous procedures are possible for simplifying paperwork or computer processing throughout the requisitioning-soliciting-ordering-invoicing-paying cycle. And the problems and costs of maintaining inventories can be greatly reduced and sometimes almost eliminated by use of term contracts which provide for the successful bidder to warehouse and deliver the contract items as needed by the using agencies.

Scheduled buying can be regarded as a definite quantity type of term contract where needs of certain items are aggregated for one or more agencies and purchased in bulk at predetermined intervals. The purchasing intervals are established in accordance with market characteristics or using agency consumption patterns, taking into consideration seasonal factors and warehousing facilities. A schedule is then developed whereunder particular commodities are contracted for at monthly, quarterly, or longer intervals.

The type of commodity being purchased affects the decision to use indefinite quantity term contracting or definite quantity scheduled buying. For example, fresh meats and similar perishables are usually requisitioned on an as-needed basis. Consolidation in such cases relates more to immediate needs, and the planning cycle is generally limited to the life cycle of the perishable commodity. Consequently, bulk buying for perishable items normally occurs several times a year.

Commodity usage also affects selection of the contracting method. Commodities which are typically required throughout the year and used widely among all agencies usually lend themselves to indefinite quantity contracting. Items which are required on a seasonal basis or have a predictable usage pattern are more suited to definite quantity scheduled buying.

Probably the two most important factors influencing which technique is appropriate are the accuracy with which central purchasing can determine the quantity requirements for a specific commodity and the relative stability of its price. Where the exact quantity required is known, scheduled buying can be carried out. Advancements in computer applications, combined with growth of more highly developed commodity classification coding, are enhancing the abilities of central purchasing offices to assemble the usage and needs of individual items quickly and accurately. But where quantities cannot be determined correctly in advance, and where actual usage can vary substantially, term contracting is suitable.

The state of the economy and especially the market

conditions applying to the commodity or commodity group in question also must be considered. A buyers' market generally improves the practicality and attractiveness of term contracting because suppliers are more willing to accept the buyers' terms and conditions. On the other hand, fluctuating prices or a sellers' market associated with product shortages are not conducive to long-term contracts.

Individual or "open market" definite quantity purchases with specific delivery dates rarely, if ever, allow for price adjustments. Firm fixed prices apply also to the great majority of contracts awarded under scheduled buying. Indefinite quantity contracts, however, frequently provide for price reductions, and in an inflating economy carefully worded provisions for price increases can be used very successfully, especially when accompanied by a clause permitting cancellation by either party upon 30- or 60-day prior notice. This use of a fixed price contract with price adjustment allows the bidder to offer his most favorable price at the time of bidding, rather than an inflated price as a hedge against later market increases; and the purchaser receives the advantage of this lower price which may, in fact, not increase at all during the period of the contract. If a request for increase is not adequately documented or otherwise does not appear acceptable, the price adjustment clause should provide that the purchaser may cancel.

Indefinite quantity contracts are most effective as requirements contracts awarded under competitive bidding. Correctly understood, a requirements contract obligates the agency or agencies eligible to buy under the contract to order any and all of their needs of the designated item or group of items from the successful bidder, who in turn are compelled to furnish the items. The contract is not enforceable if a buyer may order or not order from the contract according to whim, desire, or preference.

Under both term contracting and; scheduled buying, or central purchasing must insist upon strict compliance with the intent, terms, and conditions of the purchase contract. Using agencies must not be allowed to depart from the contracts, except under some circumstance that is unique, justified, and approved by central purchasing and for which the Invitation for Bids and resulting contract should provide. Effective contract administration requires that central purchasing monitor all purchases made for or by using agencies against established term contracts, either by issuing the orders from the central purchasing office or by requiring agencies to submit copies of purchase orders to central purchasing. This information base will make it possible for central purchasing to maintain an up-to-date reading on the contract status. Such information can be critical in the case of definite quantity contracts, where cumulative orders can rapidly approach the contract amount and the purchasing office needs to be alerted in time to prepare a new contract.

As noted, volume purchasing is built upon items which are ordered regularly or repetitively. This permits forecasting in terms of specific quantities or estimates, and allows quantities to be consolidated in some systematic way. "Non-volume" purchasing involves quotations or bids and awards on individual purchase requests from using departments and agencies. These do not lend themselves to planning and scheduling and will be discussed in subsequent chapters.

LEASES AND LEASE OPTIONS

The practice of leasing real property, e.g., land, buildings, and space in buildings, is well established among state and local governments. This has also applied to equipment from time to time, as when extra snow-moving machines are needed after a severe winter storm. During the past decade, however, the lease of equipment has taken on new and much larger dimensions, stimulated by the extremely high cost and rapid obsolescence of various kinds of apparatus, such as computers and radiological scanners. High technology items undergo continuing changes and improvements, and even when funds for purchase are available, decisions as to whether to buy or lease become difficult to make. Only foresight and thoughtful planning can reduce the risks of poor decisions.

A lease is a contract under which title to the building, equipment, or other property will not pass to the lessee. A lease with an option to purchase, however, allows title to pass if the purchase option is exercised. It is, or has the effect, of a conditional sales agreement.

Leases and purchase options should never be used to avoid or circumvent the requirements for competition. Some jurisdictions already have statutes which guard against this. In others, legal divisions have ruled that an option to purchase cannot be exercised unless the agreement containing the option was awarded under competitive bidding or unless the item in question meets the tests of an emergency or sole-source procurement.

The soundest and safest rule is that any leases of equipment be subject to the requirements for competition that apply to outright purchases.

Where third-party leasing is involved, competition can be applied to the cost of money. Savings on interest costs often can be realized by taking competitive bids on finance charges applicable to the lease.

COST PRINCIPLES

Some types of contracts call for the application of cost principles. Chief among these are cost contracts, cost-plus-fixed-fee contracts, and cost incentive contracts. The central purchasing office should establish written guidelines defining cost principles and conditions for their use. If central purchasing does not have in-house capabilities for cost and price analysis, assistance should be made available from appropriate fiscal management

operations of the jurisdiction.

Most state and local governments do not currently require the application of cost principles in many instances where it would be advantageous. In general, the principles should be used more extensively in connection with contracts for research and development, sole source requirements, professional services arrived at by negotiations and for determining contract price adjustments and cancellation charges.

6. Acquisition: Specifications

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Enunciate the policy that purchase specifications shall be written to provide for and encourage full competition.

Require that central purchasing establish and maintain a specification and standardization program with written policies and procedures.

Authorize central purchasing to prepare, review, modify, approve and enforce purchasing specifications; and to delegate to using agencies the preparation of specifications as appropriate.

Require the adoption of rules and regulations authorizing use of all types of purchase specifications and prescribing procedures for developing them.

Preclude the use of restrictive specifications, except under conditions prescribed by rules.

Provide that private architects, engineers, designers, and draftsmen preparing specifications for public contracts adhere to the requirements for openness and nonrestrictiveness described in the statute.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Describe the roles and responsibilities of central purchasing and the using agencies in the preparation and enforcement of purchase specifications.

Identify and define different types of specifications and procedures for preparing them.

Provide for review by central purchasing of specifications for undue restrictiveness, for appropriateness of quality level, and for suitability for competition solicitation; and provide it may take appropriate action to these ends.

Encourage use of performance specifications to promote ingenuity, innovation, and cost reduction.

Establish a policy on the use of brand name specifications and a policy on brand-name-or-equal specifications that encourages competition.

Cover the consideration of bids offering alternate specifications.

Prohibit material furnishers and prospective suppliers from bidding on requirements if they prepare the specifications.

Encourage the use of specification advisory committees including user personnel in establishing, modifying, and updating standards and standard specifications.

Recommended Practices

Purchase specifications should be closely tailored to utility and not call for features or quality not needed for an item's intended use.

To aid in providing commonality for bidding a specification should identify the essential characteristics of the item to be purchased.

In drafting and updating specifications, voluntary consensus standards and specification information available from other governmental units should be used fully.

Generally, specifications should provide for commerical products (off the shelf items) and not unique or custom-made items.

Standard specifications should be issued in a prescribed format, properly indexed, and each should carry a designated time for review and updating.

The conventional use of the term "specification" refers solely to a description of an article of service called for, which is the meaning given to it in this discussion. It is used interchangeably with "purchase description," and may or may not contain technical requirements. Essentially, the specification is any type of description of the characteristics or nature of the item being sought. In addition to "purchase description," other terms with like meaning are "purchase specification," "product description," and "purchase requirement."

A specification can include requirements relating to samples, prototypes, inspection, testing, warranty and packaging. The specification should not contain bidding instructions, contractual terms and conditions, delivery, pricing formats or sheets, or similar material which should be provided separately in the Invitation for Bids or the Request for Proposals.

The overall purpose of a purchase specification is to provide a basis for obtaining a product or service which will satisfy a particular need at economical cost. Carrying out this purpose implies considerations related to suitability and to cost-effectiveness, including factors

beyond minimums or initial price.

In public purchasing, another purpose of a specification is to invite maximum reasonable competition. To this end, specifications may not be unduly restrictive. By definition, a specification sets limits and thereby eliminates, or potentially eliminates, items that are outside the boundaries drawn. As a principle of public purchasing, however, a specification should be written to encourage, not discourage, competition, consistent with seeking overall economy for the purpose intended.

Instructive insight into the philosophy and objectives of a purchasing program can be gained from noting the appropriateness of the types of specifications used for the procurement of different kinds of goods and services.

AUTHORITY FOR SPECIFICATIONS

Sound management requires that there be central control over purchase specifications. Responsibility for the final correctness, competitiveness, and suitability of specifications is a necessary duty of the central purchasing authority, although a specification may be originally prepared by a using agency, an independent architect or engineer, another governmental entity, a professional society or association, or the central purchasing authority itself. Without central control, every using agency would set specifications for its own purchases, resulting in different specifications for the same items. Such inconsistencies would be disorderly, confusing to bidders, unmanageable and indefensible. However, cooperation between central purchasing and using agencies concerning the efficacy and suitability of specifications is essential, with the initiative for maintaining this cooperation resting with the central purchasing office.

Cooperation is often made difficult by an attitude concerning program funding which generally exists among using agencies. The agency point of view, oversimplified and perhaps overstated, is that it is authorized to spend to the limits of its budget and should be able to buy the product or service it prefers if the purchase would not exceed the funds available. The professional purchasing point of view, on the other hand, is to conserve funds, and to refrain from buying a more costly product or larger quantity than is actually needed. This difference in attitudes is a persistent undercurrent even in calm waters.

Some two-thirds of the states employ policies calling for central purchasing to review the quantity and/or quality specified in using agencies' requisitions. The National Institute of Municipal Law Officers' Model Purchasing Ordinance for local governments provides that the purchasing "Agent shall examine each (agency) requisition or estimate and shall have the authority to revise it as to quantity, quality, or estimated cost," with revision as to quality subject to certain standards and specifications. Similarly, the American Bar Association Model Procurement Code Suggested Regulations for State and Local Governments recommends the chief procurement officer have authority to return a purchase requisition to a using agency when "the request exceeds agency needs" or "quality requested is inconsistent with (the jurisdiction's) standards and usage." The Model Code also stresses that specifications shall seek to encourage competition and promote overall economy for the purposes intended.

Almost all of the states and many local governments have standardization programs. Though the central purchasing authority has extensive responsibility regarding procurement specifications, it is incumbent upon using agencies to initiate their program needs. Since central purchasing is a support function for program agencies, it, too, is concerned that program managers obtain the correct items to serve their requirements. The duty of the purchasing function to see that specifications encourage as full competition as is practicable causes varying degrees of misunderstanding between the using agencies and the central purchasing authority, which often must modify agency suggested specifications to make them less restrictive. To reduce such misunderstanding, the specification process should be set forth in writing, citing the roles and responsibilities of both using agencies and central purchasing.

There is often direct vendor involvement in the development of specifications by using agencies. This condition emphasizes further that although using agencies may initiate the descriptions of items they are seeking, it must remain the responsibility of central purchasing to determine that the specification which finally accompanies the Invitation for Bids is not unnecessarily restrictive and does not call for features or for a level of performance or quality not needed for the item's intended use. Consistency, accountability, and enforceability necessitate that the purchasing office have approval of specifications before they are offered for bidding. Because of inherent potential for misconception and conflict over this question, *the purchasing statute should authorize central purchasing to establish, revise, and enforce purchase specifications, and should require the promulgation of rules and regulations to carry out this purpose.*

TYPES OF SPECIFICATIONS

In communicating to the prospective bidder or offeror what the purchaser wants to buy, specifications can be prepared in a number of ways. Speaking generally, one is the specification that requires something unique, to be custom-made or custom-built, as is characteristic of construction and public works projects, many contracts for professional and personal services, and federal government product specifications. The other general group calls for ready-made, off-the-shelf commercial items, regularly available in the marketplace, as is characteristic of equipment, materials, and supplies purchased by state and local governments under competitive sealed bidding.

Specifications can also be described as standard and non-standard. A standard specification is developed for repeated use, in the sense that it can be lifted from a file in ready-to-use condition or can be cataloged and cited by reference. A non-standard specification is prepared for a particular procurement and connotes a one-time use.

Within these broad groupings are more particular types, including: brand-name specifications; brand-name-or-equal specifications; detailed, design type specifications; functional or performance type specifications; and the Qualified Products List (QPL)—also called an Approved Brands List (ABL) or Approved Products List (APL)—kind of specification.

The heavily detailed, design type of specification is usually necessary in the purchase of custom-made products and in contracts for projects built or performed to the purchaser's special design. Its use otherwise is not necessary, nor usually advisable. The functional or performance kind of specification has distinct advantages in promoting competition and in evaluating responses to ascertain overall economy. A carefully prepared specification customarily contains both design and performance requirements.

There is a need and place for all of the different types of specifications. Critical to the relative success of a purchasing program are the knowledge, insight, and understanding of the staff in making the daily procurement-by-procurement decisions as to the most advantageous type of specification to use for each purchase.

Brand Name Specification

Although related, brand name, brand-name-or-equal, and qualified products list types of specifications are different. The brand name specification or a detailed specification which is written to have the effect of limiting the bidding to a single product are the most restrictive kinds of specifications. Their use should not be permitted unless only one product will meet an intended need, and when the chief purchasing official has made a prior written determination to this effect.

A version of the brand name specification also is sometimes justified by a need for limited standardization, as in the cases of residential water meters or watt-hour meters. In these cases, after the policy decision has been made the bidding can be limited to two or three specific makes and models.

Brand-Name-or-Equal Specifications

A brand-name-or-equal specification cites one or more brand names, model numbers, or other designations that identify the specific products of a particular manufacturer as having the characteristics of the item desired. Any other brands or models substantially equivalent to those named are considered for award, with the purchaser reserving the right to determine equivalency. Brand-name-or-equal specifications invite product and price competition across the marketplace, and they have a legitimate if limited place in public purchasing. Where the time and resources necessary to develop another kind of specification are not available or cannot be justified, or where simple practicality dictates, a brand-name-or-equal specification can be used and the more complex specifications efforts directed elsewhere.

When brand-name-or-equal specifications are employed, it should be clearly stated that the brands designated are for reference purposes only, and are not a statement of preference. To the extent practicable, three or more brand references should be used, and unless the essential characteristics sought are adequately conveyed to the industry by the reference, any particular design or functional characteristics needed should be so designated. The specification should always be accompanied by a phrase such as "or equal," "or approved equal," or "similar in design, construction, and performance," to indicate that items equivalent to the specified brand names will be acceptable. Further, this intent should be set forth in the Invitation for Bids by a statement such as:

"Any manufacturers' names, trade names, brand names, or catalog numbers used in the specification are there for the purpose of establishing and describing general performance and quality levels. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacturer."

Qualified Products List

A qualified products list (QPL) is a specification based also on manufacturers' names, brand names, and model numbers, but it is arrived at by a systematic and formal process. A QPL is predicated on a written specification which includes certain tests or other criteria for comparing or examining and approving products prior to soliciting competitive bids. These criteria and the methods for establishing and maintaining a QPL vary widely for different types of products. For an item of heavy construction equipment, a written specification might be prepared and similar models from different manufacturers given field tests to determine which meet the performance requirements. For musical instruments, a committee of musicians acting as advisors to central purchasing might test different brands of an instrument according to predetermined measures. In the case of padlocks, a number of brands might be tested under controlled conditions, and assessments made of their performance. For ready-mixed paints, laboratory tests may be used to accept or reject a brand.

Some items require lengthy examination or tests. A qualified products list eliminates the need for samples or testing after the receipt of bids. Awards can be made promptly, the acceptability or comparative rating of

products having been determined before bidding.

This type of specification can reduce the amount of testing in the long run because different brands can be tested simultaneously. Also, once a product is accepted for the list, it does not require further testing until either the specification or the product changes. Actual samples and/or highly documented files should be kept on each item that qualifies. These can be used as a contract standard so that contract quality can be enforced if a supplier delivers questionable goods.

The need for enforceability results not only from concern over receiving substandard goods, but also from a problem inherent in the process. The lists specify acceptable products by brand name, model number, or whatever designation is necessary to precisely identify a certain product. Sometimes manufacturers modify the quality of a product without changing its model number or other designation. This means the product may still be listed as acceptable though it may no longer meet the specification. Even where manufacturers or their representatives agree to inform purchasing if they make any such changes, the added assurance of having a documented standard of quality is necessary.

While the use of qualified products lists often enhances uniform testing and simplifies the award process, there can be a disadvantage if over a period of time the approval of products tends to gravitate to marginal levels of quality. This can be prevented by including in the qualification procedures, where feasible, qualitative ratings or test scores which are used to evaluate bids by relating these numerical ratings to the bid prices in order to arrive at optimum value. For example, if a truck tire must pass a use test of a minimum average of 25,000 miles to be qualified, and the test averages of the six brands which pass are 25,000, 26,000, 29,000, 30,000, 32,000, and 36,000 miles, then these figures and the price bid on each can be equated to determine the lowest average cost per mile.

This concept of relating performance and price also aids in overcoming another disadvantage—that of looking behind rather than ahead. In dealing only with products already on the market, QPLs do not encourage or take advantage of innovation unless they use performance ratings as criteria for qualification and in the evaluation of bids.

In developing Qualified Products Lists, there is need for clear policy on how the qualification process is conducted. The manner and times of tests must be made known to bidders or prospective bidders, who then have the responsibility of submitting items for qualification within the prescribed time or foregoing inclusion on the QPL for the ensuing procurement.

Design Specifications

The following discussion of design and performance types of specifications should be understood in the context that each usually contains elements of the other.

Design specifications customarily employ dimensional and other physical requirements of the item being purchased. "Design" in this sense means that the specification concentrates on how the product is to be put together. It is the most traditional kind of specification, having been used historically in public contracting for buildings, highways, and other public works, and represents the kind of thinking in which architects and engineers have been trained. Its use is called for where a structure or product has to be specially made to meet the purchaser's unique need.

Other than construction work, however, state and local governments buy almost exclusively commercially available products designed by the manufacturer or seller. Here, detailed design specifications often have serious disadvantages. One is the tendency to call for precise characteristics that unnecessarily limit competition. Unless an article is to be custom-produced, it can be extremely difficult and at times impossible to draft design specifications without being unduly restrictive.

Other disadvantages are equally obvious. Detailed product specifications are inclined to reflect the status quo, and thereby lag behind the state of the art and prevent consideration of latest improvements. In tending to perpetuate current or outmoded concepts and methodologies and to discourage innovation, they limit both product and price competition. The rigidity of a highly detailed specification and the emphasis on initial price are incentives for the bidder to offer minimum to marginally acceptable quality.

As a rule, this type of specification does not accommodate a rapidly changing technology and is poorly suited for the purchase of many commercial products.

Performance Specifications

The popularity of the functional or performance type of specification has grown rapidly in recent years. The terms "functional" and "performance" are used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. The performance specification is less interested in how a product is made, and more interested in how it performs, how well it performs, and at what cost. Performance purchasing is results oriented in terms of function and cost. In contrast to the design approach, performance specifications afford the manufacturer or bidder sizable latitude in how to accomplish the end purpose.

Performance requirements describe the characteristics and capabilities that are pertinent to the intended use of the article. Tests or criteria are developed to evaluate a product's ability to perform and to endure as required.

Functional specifications are not new. Signal Corps Specification No. 486 dated December 23, 1907 was almost entirely a performance requirement incorporated in an "Advertisement and Specification for a Heavier-than-Air Flying Machine," on which the Wright

Brothers, Dayton, Ohio, was the successful bidder at a contract price of $25,000.00, for delivery within 200 days to Fort Myer, Virginia, and the "package to be marked Order 3619." Yet writing performance specifications requires a different point of view than writing the more traditional detailed type. For the latter, the customary attitude is to look for similarities and equivalencies in products in order to establish common denominators, and largely to ignore product differences. Functional specifications, on the other hand, accept the similarities, but seek out differences which can provide equal or better performance and lower overall costs.

One element of the performance specification is eliciting information on use-cost as a more accurate basis than initial price for ascertaining ultimate economy. Utilization and limitations of life cycle costing (LCC) are discussed in Chapter 10, "Evaluation and Award." LCC has its roots in the drafting of specifications which define and require the kinds of performance data that are essential to the application of LCC criteria.

SAMPLES AND TECHNICAL DATA

Samples and data questionnaires are valuable aspects of the specification process, and their use almost universally falls short of their potential. For many items, the comparison and testing of samples can effectively supplement a brief product description.

Examples of this are waxes and floor finishes, paints, disinfectants and germicides, file cabinets, surgical dressings, tires, cleaning agents, printed forms, classroom furniture, and art materials. Under this procedure, bidders are invited to offer their price and a sample of the product against a general descriptive specification. The samples, unidentified, are then subjected to comparisons ranging from visual inspection and evaluation to chemical and physical laboratory tests in-use applications. Data and relative performance results are documented, and determinations are made on a price/performance, cost-effective basis.

Samples are also of great value in assuring compliance and ultimate satisfaction after award but before production. In the purchase of truck chassis or band uniforms, for example, final award of a contract may be contingent upon the successful bidder producing a pilot model or prototype that meets specified requirements and is acceptable. This allows many problems to be resolved before the units are manufactured and delivered. If agreement on the pre-production sample cannot be reached, the contract can be awarded to another bidder.

Wherever samples are obtained and used in evaluation or award, the samples should be retained for checking and comparing deliveries for contract compliance. Product questionnaires, made a part of the Invitations for Bids and calling for technical data to be furnished by the bidders on the products being offered, can supplement specifications and in many cases can substitute for samples. Valid determinations regarding product acceptability and performance can be made from pertinent technical data as well as from the comparison, examination and testing of samples.

The great variety of goods and services bought by state and local governments necessitates the use of all of the several types of specifications. In an Invitation for Bids covering hundreds of items of laboratory supplies or automotive parts, a brand-name-or-equal specification may be the most appropriate. For a proprietary part where no other will fit, a brand name specification is necessary, with price competition solicited from as many dealers as possible. For the purchase of lead pencils, performance description, samples, and trial may serve best; for computer tape, a qualified products lists; for gasoline, a performance specification; for an x-ray machine or an air compressor, a combination design-performance type of specification. For many requirements the design-performance combination serves well, with design requirements kept to a minimum and the performance characteristics essential to the purpose and use of the product or service clearly identified and spelled out.

STANDARD SPECIFICATIONS

Where items that have similar usage are needed frequently or repetitively by a particular using agency or by several using agencies, a standard specification can be developed. This allows central purchasing, or a central committee created for the purpose, to establish performance and quality levels for common usage, which reduces the varieties of things bought, simplifies inventories, facilitates the consolidation of requirements into large volume bids and contracts, and eliminates duplicative specification writing.

The term "standard specification" is related to but should be distinguished from two similar terms. "Standardization" is a process that establishes a norm for an item with respect to size, shape, color, or some other essential attribute. Standardization results from selection or limitation from a broader field. If there are trucks that carry many different maximum loads, a government might standardize on a three-quarter-ton truck for light work and a two-and-one-half-ton for heavy work. A "standard" is a norm resulting from a standardization process that is accepted by the group concerned. The standard may deal with part of an item or the entire item. The size of electric outlets is standard throughout the country. The dimensions of certain light sockets are standard throughout the industry so that light bulbs from manufacturers X, Y, and Z will fit them.

Many jurisdictions, state and local, have formal programs for adopting standard specifications. This responsibility is often assigned by statute or ordinance to a "standardization" or similar committee or board composed of administrative officials from different depart-

ments, institutions, and agencies. It is the duty of the committee to adopt, wherever feasible, specifications for supplies which shall apply alike to the needs of the majority of using agencies, with the implication or direct instruction that the committee establish the standards in accordance with which the specifications are written. The governing law or rule also usually provides that using agencies shall be consulted in the process of developing and adopting standard specifications, and that either the committee or the chief purchasing officer may exempt an agency or a particular purchase from the standard.

The idea of high-level standards committees and standard specifications was strongly endorsed and widely accepted in public purchasing during a period 10 years or so both prior to and following World War II. Much of this support was generated by activities of the federal government, wherein by December 1950 over 2,000 standard specifications had been established for federal use by the Federal Specifications Board, housed in the Federal Supply Service of the General Services Administration.

Encyclopedic changes since that time call for a re-examination of these programs. An accelerated rate of technological change tends to impose a built-in obsolescence on standard specifications for many kinds of items. The programs should not be abandoned, however, or allowed to languish—there is still a need for them. But if they are to be assets instead of handicaps, they need to be re-evaluated and modified.

Re-examination should be directed to the end that the program accommodates and is readily responsive to new concepts, to improved products, and to advanced applications. This calls for focus on at least five aspects of the program:

- Identifying items for which standards currently are relatively stable, such as meats, canned fruits and vegetables, and various building materials.
- Discontinuing standard specifications for items where such specifications are no longer needed or it has become impractical to update and maintain them.
- Substituting, wherever possible, performance requirements for dimensional and other design-type details especially on items for which manufacturing standards tend to be unstable.
- Providing a highly expeditious means of reviewing and modifying a standard specification for a current procurement.
- Expanding the advisory role and adhoc participation of using agency personnel throughout the standards work.

A standardization and standard specifications program as popularly conceived and operated is a static program in terms of the daily scientific advances and unpredictable markets that have become everyday conditions. The ability of such a program to meet its fundamental objectives, yet adjust and be current, depends upon flexibility both in procedure and in specification writing. As a means of reducing rigidity and obsolescence for items that must be custom-made or unique, standard specifications may emphasize details but should incorporate performance standards where practicable. For commercially available items, a standard specification should be based on performance criteria with design/detailed factors used only if demanded.

Attention must be directed to improving procedures for adopting standard specifications. Standardization boards and standing specifications committees tend to become institutionalized, comfortable with the status quo, and inflexible. Ad hoc committees can bring fresh approaches to the process.

NON-STANDARD SPECIFICATIONS

The great majority of procurement transactions are not based on standard specifications. The term "non-standard specification" has no certain meaning and is used here only as a convenience for referring to many specifications and product descriptions which are not standard specifications and are not formulated according to procedures prescribed for standard specifications. If a central purchasing office issues an average of 50 solicitations daily—Requests for Quotations, Invitations for Bids, and Requests for Proposals—possibly not more than five to 10 involve a standard specification. Yet standard specifications can apply to many separate items in a single solicitation, such as an annual contract for soaps and detergents, which often are the kinds of requirements that lend themselves to term contracts and scheduled purchases where bids are taken only quarterly or yearly.

A non-standard specification, therefore, can be anything from a simple brand-name-or-equal description to a statement of work for a professional service to a detailed specification for construction of a hospital.

PROCEDURES FOR DEVELOPING SPECIFICATIONS

Although central purchasing has, or should have, final responsibility for the competitiveness and suitability of purchase specifications, it does not have to initiate or prepare all specifications. The size of staff necessary to do this would be prohibitive. The concept of central purchasing as a management function contemplates that much of this kind of work be done by others, with purchasing seeing that proper rules and procedures are observed and reviewing the work for competitive purposes before issuing an Invitation for Bids or Request for Proposals.

Usually, central purchasing serves as the primary activity in developing specifications for items purchased under indefinite quantity term contracts and definite quantity scheduled purchases. These include most of the standard specifications. Central purchasing also is closely involved in the formulation and enforcement of policy and procedures applicable to the development of

specifications generally.

The duty of public purchasing to promote both product and price competition requires that purchase specifications be as nonrestrictive as practicable, consistent with satisfying legitimate needs. This duty remains the same when specifications are prepared by using agencies or by independent architects and engineers.

Written policy and procedures should govern the development and application of specifications. For brand-name-or-equal specifications, the rule should call for naming as many different brands as is practical and the designation of any essential components or features, unless these are known to the prospective bidders by the nature of the brands used as references.

For a brand-name, exclusive specification rules should require that central purchasing determine in writing that the purchase be restricted to one brand. The rule should further stipulate that where the product is available from more than one source, price competition be solicited; otherwise, purchase is made through negotiation with the single source.

Procedures for developing a qualified products list are more complex. The QPL has the effect of a standard specification, and in some jurisdictions adoption by the standardization committee or board is a requisite. Even where this is not the case, the procedure should require that: (a) the draft of the specifications, on which inclusion or rejection of products on the QPL will be made, is circulated for review and suggestions to using agencies, to manufactuers, and to known interested bidders; (b) that solicitations be made in writing for the submission of samples or products to be examined for initial inclusion on the list; (c) that the specification include a provision which explains how and when products may be offered for consideration together with the criteria by which they will be evaluated; (d) that test data and certain proprietary information revealed in or resulting from the evaluation may be kept confidential; and (e) that if substantive revision is needed in the controlling specification, drafts of the proposed addition or change be circulated to using agencies and to industry for comment before being made effective.

The development process for a standard specification should be essentially the same as that for a qualified products list.

In addition to providing for non-restrictiveness, specification policy should state that the purchase of commercial products is preferred over specifications which require that items be especially made, that commercial or voluntary consensus standards shall apply wherever feasible, and that unique requirements are to be avoided. It should further state that specifications shall endeavor to stress functional and performance characteristics and call for design and other requirements only to the extent necessary.

Also, specification policy and procedure should provide for standard formats of specification documents; i.e., uniform presentation of the elements, consistent identification (usually by numbering related to commodity codes), and adequate reference to the kind and source of the specification. Central purchasing must be responsible for final editing of the document, insuring clarity of language without jargon or in-house terminology. A specification can be unclear, confusing, and restrictive in form as well as substance.

ALTERNATES AND OPTIONAL ITEMS

Specification writing can influence and overlap the award process in several respects. This is only one reason that buyers and technical staff need to work closely together. Relationships between specifications and the analysis of bids are discussed also in the chapter entitled "Evaluation and Award," but certain decisions regarding the need for alternates and options have to be made in the preparation of specifications.

Alternate specifications are sometimes needed, in the public interest, to consider comparisons of costs or to keep awards within the funds available. Also in the public interest, they can be used to obtain wider competition, quicker deliveries, and other advantages. But they can be manipulated to exercise favoritism, as can provisions for optional items.

Optional items are features which may be adapted to a piece of basic equipment (e.g., automobiles, construction and communications equipment) and may enhance performance or capacity, may be needed under certain circumstances, or may represent only luxury accessories. Optional items can affect significantly the total price of the equipment, and because this expense may or may not be recoverable at the time of disposition they are important cost considerations. This difficult area requires special attention on the part of purchasing personnel but frequently is overlooked. *Decisions concerning optional items should not be delayed until bids have been opened or are being evaluated for award.* Careful planning and proper structuring of specifications and Invitations for Bids are critical to the successful inclusion of alternates and the purchase of optional items.

Often, however, even prices on optional items are requested. Awards often are predicated on the basic equipment only with the costs of options not considered in the evaluation of bids. The prices for options represent, in effect, an agreement that the successful bidder will invoice any that are ordered at the quoted figures. This practice fails to determine which bid, options included, offers the most favorable price. To avoid this, as well as awards based largely on conjecture as to the options that may be purchased, it is necessary that reliable data be maintained as to which optional items are normally ordered and the frequency of the orders. An evaluation of data will indicate the items on which prices should be scrutinized and how the prices should be weighted in the bid evaluation. Expected usage factors can be developed for individual optional items, or a weighted factor can be used to cover all of them. These factors, as described in the IFB, are then used in comparing the bids. For example:

OPTIONAL ITEMS

Bidder	Price Bid for Basic Equipment	Bid Price	Expected Usage Price	Expected Purchase Price	Total Effective Price
A	$3,300	$1,450	80%	$1,160	$4,460
B	$3,400	$1,100	80%	$ 880	$4,280

The total effective price is the sum of the bid prices for the basic equipment and the prices of the optional items which experience shows will likely be purchased.

Since a barrier to the proper treatment of optional items is lack of readily available historical data, such data should be included when building a purchasing management information system. Obviously, sound awards cannot be based on simple assumption of purchases of optional items which may or may not occur. However, usage factors for optional items which are based on historical data and updated for current estimates of anticipated needs are as reasonable and valid considerations as other budget or planning data.

An alternative which helps further avoid uncertainties associated with expected usage is to request that users determine in advance their specific requirements for optional items. These requirements can then be incorporated into the Invitation for Bids and their prices evaluated accordingly.

SPECIFICATION FOR A SPECIAL PURPOSE

At times it is necessary to purchase an item for an unusual purpose when no items of that kind are normally produced or marketed. For example, there may be a need for a sewing machine to instruct blind persons. Specifying the features of the most nearly acceptable, regularly available product could be highly restrictive; and a unique specification requiring the item to be custom-built would result in excessive price, extended delivery, or perhaps no bids at all because the demand for the item would not warrant retooling and special production. Therefore, the purchasing official can solicit bids on standard production machines accompanied by a performance questionnaire setting forth safety and similar pertinent requirements and directing the bidder to state the modifications it offers to make to a standard product to render it suitable for the special application. In this way, any prospective supplier can compete on the basis of an impartial evaluation of the equipment offered by all who respond.

AIDS IN PREPARING SPECIFICATIONS

As noted, it is not the purpose or role of central purchasing to write all specifications. To attempt to do so would create an unduly large and impractical bureaucracy. Central purchasing should, however, implement the rules and procedures for preparing purchase specifications or product descriptions, examine specifications for competitiveness and purchasing suitability, and enforce adherence to them on the part of contractors.

As a part of these duties, and as a logical matter, central purchasing usually issues standard specifications and develops the purchase descriptions for items covered by indefinite quantity term contracts, by definite quantity scheduled purchases, and by other contracts which central purchasing generates. Specifications and product descriptions for requirements bought in response to purchase requisitions submitted by using agencies, or for items purchased directly by the agencies themselves under delegation from central purchasing, usually are originated by the using agency unless covered by a standard specification.

Aids in preparing specifications, therefore, are needed by both the central purchasing office and using agencies, though the kinds of aids may vary by reason of differing responsibilities.

From the standpoint of central purchasing, resources to supplement staff capabilities for specifications work fall into four general categories: product information from industry; standards and test information from national professional societies; individual specification information from other governmental jurisdictions, federal, state and local; and, most important, knowledge and expertise from personnel of the using agencies it serves.

The central purchasing staff must establish and maintain open communications with these resources in a manner that systematically gathers, culls, classifies and makes use of the information available.

Specification advisory committees, in different product areas, consisting primarily of knowledgeable program people from various using agencies, are a necessary and invaluable part of a successful specifications program. These committees will function effectively, however, only if central purchasing exercises strong leadership. Some form of flexibility of membership is preferred to long-term standing committees.

Two relatively simple and extremely helpful specification aids available to central purchasing are poorly understood and generally neglected. Both relate to the kinds of specifications or product purchase descriptions which using agencies furnish with purchase requisitions. The first is to establish a general policy that agencies

endeavor to express their needs in terms of functional or performance requirements. The second is for central purchasing to facilitate this practice by designing "use data" questionnaires for specific items, such as research microscopes and fork lift trucks, to accompany agency requisitions. Use of these aids helps to accomplish two important objectives: diverting the attention of agency program personnel from a particular brand preference and directing it to describing the purpose for which the item is required; and providing central purchasing with the kind of information needed to invite broader competition from prospective bidders and establish valid criteria for evaluating responses.

The marketing programs of many businesses are geared to sales efforts made directly to using agencies rather than to or through central purchasing. In addition to creating demand for needs that may not exist, and stimulating unwarranted preferences for particular brands or sellers, the practice frequently has the improper consequences of a seller drafting or writing a purchase specification. This represents a violation of law in a few jurisdictions; but if this does not apply there should be written policy to the effect that where an agent or representative of a manufacturer or prospective bidder participates in the preparation of a purchase specification, bids submitted on that product or service, or from that bidder, under the ensuing solicitation will not be considered for award. While information and advice are needed from industry and sellers, vendor drafting of specifications prejudices the rights of other prospective bidders and the public. This is an aid that should not be allowed. Some larger central purchasing offices have partially overcome this problem by employing staff specialists, often persons with industrial engineering training, to give on-site assistance to using agencies in preparing purchase requisitions for such requirements as work processing installations, copy centers, and science furniture and food service installations.

A particularly helpful specifications aid for the purchasing program can be found in the expertise and testing capabilities of colleges and universities, especially technical institutions. The most productive way to use these resources is to establish an agreement, formal or informal, between the central purchasing office and the college administration. Outside the government community, and in addition to groups already referred to, there are many industrial trade associations and independent research and testing organizations which can supply up-to-date technical information on a regular basis across a wide spectrum of product areas.

COOPERATION AND COORDINATION AT THE NATIONAL LEVEL

There is a great deal of duplication among state and local governments in their specifications programs. A certain amount of this is desirable and valuable—it allows for different approaches to problems, takes advantage of diverse trial and error, and leads to greater innovation. On the negative side, much of the duplication is wasteful.

For a number of years, public purchasing officials have declared that a cooperative standards and specifications effort on a national level, coupled with an efficient system of information interchange, would be a highly beneficial undertaking that could result in significant advances and savings. Considerable thought has been given to such a program, but with limited success as yet due to lack of funding and staffing. The Council of State Governments, the National Association of State Purchasing Officials, the National Bureau of Standards, the National Institute of Governmental Purchasing, and other public and professional associations have a continuing interest in such an endeavor. Its merits, including economies to state and local governments in both administrative costs and the costs of items purchased, appear to be so obvious that it is only a matter of time until a successful program of this kind is instituted.

An encouraging sign is seen in NASPO, NIGP, and the American Society for Testing Materials (ASTM) having established cooperative efforts involving standards development for an increasing number of items used in common by government jurisdictions, and the issuance of an "ASTM-NASPO-NIGP Quarterly Standards Bulletin." Also participating in these activities, the dual thrust of which is to avoid reinventing the wheel and to exploit special expertise, are the National Association of Educational Buyers and the Canadian General Standards Board. Standards developed in this manner are designated as *voluntary consensus standards* and have the advantage of knowledge and experience furnished by producers, purchasers, and ultimate users. As voluntary standards, they have been found not to be in violation of antitrust or restraint-of-trade laws.

7. Acquisition: Competitive Solicitations, General

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Authorize acquisition of goods and services by use of competitive sealed bidding, including multi-step bidding, competitive negotiation, and procedures for making small purchases, emergency purchases, and sole source procurements, under rules to be adopted for these methods.

Require competition for all purchases, including rentals and leases, except as may be permitted otherwise by rule and regulation.

Provide that central purchasing may determine items that can be purchased more advantageously by deletion from a construction contract.

Grant broad administrative discretion as to when bid and performance surety will be required and what is acceptable surety, except in the case of construction and other public works contracts.

Require rules for determining responsibility of bidders.

Authorize confidentiality of certain types of information under rules adopted for the purpose.

Authorize central purchasing to reject any and all bids, in whole or in part, in accordance with rules and regulations.

Authorize prequalification of bidders and require rules, including documentation, for suspension and debarment.

Authorize progress payments and installment payments as provided by rule.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Require that central purchasing establish a list of prospective bidders, and that it be categorized and maintained in a manner to solicit adequate response.

Require standard formats for the solicitation of bids and proposals.

Establish procedures governing public notice of intended purchases, and receipt and public opening of bids and proposals; and authorizing a waiver of public notice under defined conditions.

Provide procedures for effecting changes in and termination of contracts.

Set forth policies with respect to receipt of inadequate number of bids, unsolicited alternate bids, and unsolicited "all-or-nothing" bids.

Provide that any written summaries of bidders conferences be sent to all prospective bidders, and designate conditions under which site visit or attendance at a bidders' conference may be made a prerequisite to consideration of bids or offers.

Authorize the purchasing office to request bidders to extend time they designate for acceptance of tenders if necessary to complete evaluation and award of contract.

Recommended Practices

Except for construction work, use of bid or performance bonds should not be the general practice.

The bidder's application form should be periodically reviewed for revision, and consideration given to providing space for product history, capabilities for service, and other pertinent information.

There should be a written description of the organization, structure, and maintenance of the bidders list, including criteria for evaluating applications and procedures for removal and reinstatement.

Procedures for conducting bidders conferences should be set out in writing.

The bidders list, responses to solicitations, and vendor performance should be maintained on automated data equipment, and the list should not be available to persons or groups for promotional or other mailing list uses, or for political or private gain.

Criteria should be established for rejecting individual bids or proposals and for rejecting all responses.

Any substantive information furnished to a prospective bidder regarding a solicitation should also be supplied to other prospective bidders.

The great majority—perhaps 85 percent or more—of expenditures by state and local governments for goods and services result from competitive solicitations. Three methods are used: competitive sealed bidding, competitive quotations involving amounts less than the minimum figure for which sealed bidding is required, and competitive negotiation. The balance of 15 percent or so consists of emergency purchases, sole source purchases, purchases which are too small to justify obtaining competition, and miscellaneous non-competitive acquisitions

such as a purchase from another governmental unit.

Numerous techniques and procedures, e.g., the use of bidders lists, are common to all forms of competitive solicitations. Other elements, as in calling for bonds, may be characteristic of some kinds of purchases and used less frequently in others. This chapter discusses various aspects of competitive solicitations which have, or can have, general application to any purchase.

The instrument for soliciting competitive sealed bids is commonly designated as an Invitation for Bids (IFB), for competitive quotations as a Request for Quotation (RFQ), and for competitive negotiation as a Request for Proposals (RFP). The document for soliciting competitive bids on the sale of surplus property is typically referred to as a Request for Sale Bids.

PUBLIC NOTICE

Many state and local governments require, usually by statute or ordinance, that purchases expected to exceed an amount established by law be given public notice in the form of newspaper legal advertisement. Some jurisdictions have commerce publications or public registers and require announcements placed in them. These notifications are not highly useful in generating competition; but in declaring publicly what is being bought or sold and when, how, and where bids can be submitted, they contribute to the openness of the public purchasing process.

Just as sealed bids are required to be publicly opened, law should require some form of public notice of an intended purchase of a significant amount. The specific amount above which the notice must be given should be designated in the governing law, together with the length of time, such as 10 days, that the notice must precede the date for opening of bids; other details of the announcement, however, are better covered by rules and regulations. The implementing rules should specify that the notice include at least a brief description of the article or service being sought, the time and place set for the opening of tenders, how the solicitation documents may be obtained, and whether a fee or deposit applies.

WAIVING PUBLIC NOTICE

There are circumstances other than emergencies which call for quick procurement action. Supplies or equipment may be needed promptly for back-up to help insure against downtime; a significant price increase on a needed item may be imminent; the scope of an ongoing task may be unexpectedly expanded. In these kinds of situations there is usually time to obtain written competition, perhaps even sealed bids, but not enough time for a seven- or ten-day or longer previous announcement. In such cases, statute or rule should authorize waiver of public notice upon written determination of necessity by the chief purchasing officer.

BIDDERS LISTS

"Bidders list," sometimes called a "vendors list," is used here as as the broad term for a list of prospective suppliers for any style of solicitation, whether quotations, sealed bids, proposals, or sale bids. In composition, a bidders list consists of many individual lists representing vendors of different kinds of goods and services, and its meaning is the same when referred to in the singular "list" or plural "lists."

For day-to-day operations, direct mailings according to bidders lists are the only practical, effective means for canvassing the market. Other methods may be used separately for unusual requirements or circumstances to supplement a bidders list or search for new sources of supply. These include: constructing a special mailing list from manufacturers' directories, small business and minority business listings, etc.; making telephone inquiries; inserting special newspaper advertisements; and placing notices in trade journals and other specialized publications.

Bidders lists should be available as public information, but their use for commercial or private advertising, marketing, or promotional purposes should be prohibited by statute or ordinance.

The relative effectiveness and efficiency of the bidders list depend largely upon the concepts under which it is established and maintained.

Establishing the Bidders List

The purpose of a bidders list should be to canvass prospective sources of supply accurately and efficiently. To this end there must be means for identifying prospective suppliers, for categorizing them according to goods and services they can furnish, and for avoiding unproductive and wasteful solicitations.

Identifying Sources of Supply

In certain respects, a bidders list comes about of its own accord, as a natural result of buyers needing sellers and sellers seeking customers. In a public purchasing program where competitive bidding is required on a large variety of items, good management practices dictate that the list be handled in some planned, systematic manner.

Prospective sources of supply are identified by initiatives on the part of both the purchasing offices and vendors. The public purchasing office has the duty to seek a full range of competition for its requirements and should have an organized, ongoing program for adding qualified suppliers to its bidders list. The office should have access to standard publications, such as Thomas' *Register of American Manufacturers* and the *Chicago Buyers' Guide,* which catalog producers and marketers of many types of commodities. Periodic review should be made of each major commodity group to ascertain the degree of competition being realized, changes in market conditions which affect competition, and specific actions

for increasing competition. The public interest is not met by mere routine solicitations or an assumption that the current degree of competition is sufficient. Purchasing has the duty both to solicit and to obtain representative, available competition. Regular efforts to locate new sources of supply are a vital part of this responsibility. Central purchasing offices have an obligation to attract responsible suppliers to bid on government business.

Businesses which wish to sell to a government frequently institute requests to be placed on the bidders list. The purchasing office should develop a specific form for this purpose, which is customarily designated as an Application for Bidders (or Vendors) List. The form should provide spaces for information requested of the applicant. Verbal requests to be included on the bidders list should be confirmed by submission of the application form, and if the application is not accepted or approved, the applicant should be so notified.

Prequalification

Some statutes or rules and/or regulations having the effect of law designate that solicitations for competitive bids be made from qualified sources of supply, which implies prequalification, or the statute or regulation may specifically authorize the prequalification of bidders, as in the case of the American Bar Association *Model Procurement Code*. In some jurisdictions, prequalification is used on the basis of administrative procedure, but this may not represent sufficient authority for the practice.

Prequalification is best accomplished through the Application for Bidders List, and the purpose is threefold. One purpose is to help assure that the applicant is a proper legal entity entitled to do business in the jurisdiction. Certain prior licensing or registration may be necessary. Purchasing offices should seek to avoid soliciting bids from businesses engaged in unlawful practices, associated with organized crime, or operating under false names, or as fronts for ethnic, minority, women-owned, or handicapped firms. More than three-fourths of the states have written criteria for including applicants on bidders lists.

Another purpose for prequalification is to help insure performance capabilities. If the purchase of a particular commodity requires local or regional commercial warehousing with service or maintenance personnel, a mail order firm located across the country does not meet the need. A firm with a net worth of less than $20,000 would not likely be qualified for award of a $1,500,000 contract. Prequalification criteria should be clear and purposeful. Producers of drugs and pharmaceuticals, for example, may be asked for evidence of their quality control measures. It should be remembered that occasionally the product rather than the bidder may be the question for qualification. This can apply where a well-established firm asks to be included on the bidders list in a category where it intends to offer a newly introduced and untested item.

A third reason for prequalification is to promote economy, effectiveness, and efficiency by preventing unnecessary costs of printing and mailing, and by receiving a favorable return on the effort and expense of issuing invitations for bids, proposals, and quotations.

A bidders list should not be looked upon merely as a mailing list. A mailing list is appropriate for disseminating information, whereas a bidders list is for the purpose of eliciting competition. An effective bidders list does this with a minimum of waste and administrative expense.

Neither prequalification criteria nor a prequalification procedure should be construed or used as a conclusive determination of bidder responsibility. Also, prequalification should not be used to establish or exercise preferences for resident bidders.

Categorizing the Bidders List

A public purchasing office buys tens of thousands of different items, and the names of bidders eligible to compete frequently number 8,000 to 12,000. In order to get invitations for bids into the hands of prospective suppliers who can be responsive to the particular item or service needed, the bidders list should be divided into categories and subcategories. The extent to which major commodity classes and groups need to be subdivided depends heavily on the nature of the item and on the responses received to solicitations.

As a general rule, the bidders list commodity breakdown should extend to that classification level which consistently produces a good return on bid solicitations. An objective can be established, such as an average of 50 percent responsive bidding, below which a bidders list is considered inadequately categorized. In structuring the bidders list, major commodity classification groupings must first be defined. These groupings should reflect the particular function with which a group of products is commonly associated. Too frequently, this first order of classification is so general that it bears little specific relationship to items in the group (e.g., machinery, which encompasses farm machinery, food processing equipment, concrete machinery, and many others). Different categories of suppliers would thereby be included in too broad a classification. Rather than group all truck suppliers under one heading, for instance, the list should contain specific breakdowns such as "four-wheel drive trucks," "pickup trucks," "tractor trucks," etc.

Classifications become further serviceable to the extent that related products and suppliers are closely matched. This is done by degrees of refinement. The classification "floor maintenance machines" can be subdivided into item codes covering brushes and pads, edgers and sanders, power brooms, scrubbing machines, vacuum cleaners, etc. Each classification must be analyzed to determine the proper level of detail for the products it covers.

Product function also should be considered in refining classification groups. When a product is sufficiently unique that variations in style, size, and quality do not materially affect its functional purpose and performance, only one item code need be assigned. For example, steel drums are available in many sizes and shapes, but they all serve a similar function which is rarely affected by their shapes and sizes. By contrast, generators are produced in varieties which may perform quite different functions. In this instance, categorization should reflect as many different types of generators as there are functions. As another application of this principle, one state has identified more than 300 categories of professional services.

Rotating bidders lists, whereby a prospective bidder receives only some of the invitations for bids in a category for which he is listed, is not recommended other than for small-dollar purchases. If there are too many listings to solicit all of them when a requirement arises, the list is likely too broadly categorized or out-of-date. Rotating bidders lists systematically reduces competition, and the solution lies in better management of the list to provide both equity and economy. More than 70 percent of the states report they do not use rotational bidding.

Bidding according to geographic areas, on the other hand, is practiced by over 60 percent of the states. This is in order where the nature of an item is local in character, such as ready-mixed concrete or coal delivered to the user's bin, or where local service is needed frequently and promptly. Regional bidding encourages participation by small business in government contracts and can enhance competition.

MAINTAINING THE BIDDERS LIST

State and local governments are rapidly expanding their automated business and offices procedures. For purchasing programs this includes computerized commodity classification systems which can substantially improve the accuracy and management of bidders lists.

The bidders list should be housed in central purchasing and cross-indexed by commodity codes and the names of the prospective suppliers.

Effectively maintaining the bidders list involves three general functions: adding new suppliers to provide increased competition; modifying and refining commodity groupings for more accuracy and efficiency; and removing prospective suppliers who fail to bid or whose performance is unsatisfactory.

Seeking new sources of supply for the bidders list is essentially the responsibility of individual buyers who are most familiar with particular markets and product lines. Fostering competition is a basic duty of the public purchasing professional.

The development of commodity coding systems by state and local purchasing offices has proceeded slowly over the years, accelerating only recently. This may have been fortunate if the systems prove to be compatible with continuing advancements in computer technology. Bidders lists which are maintained on computers in conjunction with computerized commodity classification systems are more easily modified and refined than manual or semi-automated systems. Recent developments, therefore, should bring improvements in the precision and efficacy of the systems.

Removing prospective suppliers from the bidders list is a sensitive issue. Statutes should specifically authorize that suppliers may be suspended and barred from consideration for award of contracts, and require the issuance of implementing rules and regulations formulated with the advice and concurrence of the attorney general or other legal counsel.

Among the reasons for removing a prospective supplier from the bidders list are repeated failure to bid or to bid responsively and failure to meet contract specifications or otherwise to render satisfactory performance.

Central purchasing should establish a vendor file to collect information for periodic reviews of bidders' responsiveness, performance and capabilities. This should be part of an automated purchasing management information system. Data concerning response to Invitations for Bids can be gathered within purchasing. Commonly, three or more consecutive failures to bid, or to acknowledge receipt of invitations, are considered grounds for removing a bidder from the list. Performance as a supplier can, to some extent, be measured by central purchasing agents, but reliable information is needed also from using agencies. Matters such as failure to meet delivery dates, failure to meet specifications, and failure to keep promises should be documented by agencies in the form of written reports to central purchasing, or by sending copies to central purchasing of complaints made directly to vendors. Purchasing may need to act at any time on these types of incidents, and the reports, as well as a record of all actions and their outcome, should be entered in the vendor performance file. Generally, little has been done in most jurisdictions to develop and document reports on vendor performance, and even less has been done to establish standards of performance. Lacking such necessary information, purchasing officials often are reluctant to remove bidders from the list. *Just as there is need for standards of ethics and professional conduct for purchasing officials, there is need for standards for suppliers.* The standards should provide for penalties, sanctions, or other disciplinary action, including suspension and debarment, for violating the standards.

Whatever the grounds for deleting bidders from the list, the seriousness of the action requires safeguards to protect the integrity of the lists and the rights of the bidders. Recommended procedures include:

- When removal is to be for cause (unsatisfactory performance, violation of standards), the chief purchasing official should review and investigate all reasons and evidence supporting the proposed action and make the final decision.

• When removal from the list appears to be justified, the chief purchasing official should inform the supplier in writing, and include information as to how the decision can be appealed.

• When removal is to be based on failure to bid, it should be confined to the listing for the particular items involved.

• There should be complete documentation of the reasons for the action, any contacts with the suppliers, and a record of the review and approval by the chief purchasing official.

When a supplier has been removed from the bidders list only for inactivity in bidding, reinstatement to active status should be considered upon receipt of a new application. The act of refiling for inclusion on the list usually can be considered sufficient evidence of renewed interest in doing business with the jurisdiction. This is the policy of most state and local governments.

Reinstatement becomes more complex when a supplier has been removed for cause. Good business practice requires that a supplier be reinstated only on evidence that the problems that caused removal have been corrected.

Rules should provide guidelines for suspension, debarment, and reinstatement, and should allow flexibility where the need for competition is a factor. If an item is available from only one or two suppliers, different approaches are necessary in applying disciplinary actions and, at the same time, preserving competition, or maintaining a single source of supply. It is inadvisable to arbitrarily establish exact suspension and debarment periods. Rather, it is more appropriate to provide general direction and constraints, and permit the chief purchasing official to determine the most appropriate action in individual cases.

BONDS

Requiring bonds as a part of the bidding and award process, and as applicable until completion of a contract, is intended as protection to the taxpayer against bad faith or failure on the part of bidders and contractors. Historically, bonds have been required by statute for construction and public works projects. They are not as often mandatory for contracts for equipment, supplies and services.

Bid security, or a "bid bond," affords protection against a tender being withdrawn after bids have been opened. It is a representation that the bid is submitted in good faith. The amount of the bond required is usually 5 to 10 percent of the amount of the bid, or it may be a specific dollar amount. The security is retained until award of a contract or, if no award is made, until the bids may be withdrawn. A number of jurisdictions provide for an annual bid bond to eliminate the frequency and repetitiveness of submissions.

Payment bonds are used almost exclusively for construction contracts. They guarantee payments by the successful bidder to material suppliers and subcontractors. As a rule, the bond is equal to 100 percent of the amount of the contract, with provision for reduction as work progresses and the contractor makes payments to his suppliers and subcontractors.

Performance bonds are invariably required for public works contracts and not infrequently on contracts for equipment and services. The bonds are furnished by a properly licensed surety company and provide for fulfillment of the contract obligations by others in the event of default by the successful bidder. As with payment bonds, the amount of a performance bond is usually 100 percent of the amount of the contract and may be reduced proportionately as performance under the contract moves forward successfully. A different form of protection, and one which can reduce costs to the successful bidder and the purchaser, is to allow the contractor to post a certificate of deposit or letter of credit payable to the jurisdiction and on which he collects interest if the contract is performed satisfactorily.

A few jurisdictions require an annual blanket performance bond in a nominal amount, $5,000 or less, as a condition of being included on the bidders list, with the bond applying against any awards made to the bidder during the period the bond is in effect. This is an unusual procedure and there is no evidence the practice is growing.

Every jurisdiction should develop and use a standard form for each of the three types of bonds. Suggested forms can be found in the American Bar Association Model Procurement Code.

Other than where mandatory for construction work, approximately 70 percent of the states allow bid security and performance bonds at the discretion of the chief purchasing officer. This policy is recommended. It is not necessary to require a bond of any type for many bids or purchases. Since the cost of bonds is passed on to the purchaser, unnecessary bonding is an unnecessary expense to the public. Also, requirements for bonding often present difficulties for small and disadvantaged businesses, and otherwise can be impediments to competition.

BIDDERS CONFERENCES

The use and worth of bidders conferences are being recognized increasingly throughout public purchasing. They are usually held following a solicitation for bids or offers and prior to submission and opening, but may also be held before a solicitation is issued.

The purpose of the bidders conference is to promote competition. The conference provides a forum for buyer and interested sellers to discuss the buyer's needs and purposes, facilitating a clear understanding and the submission of bids or offers that are responsive and competitive.

Conducting a pre-bid conference involves notification to prospective bidders by central purchasing of the place

and time of the meeting, a review of the provisions of the solicitation or the proposed solicitation, and anticipation that modifications to the solicitation may result. Central purchasing should direct the meeting, and if the requirement is for a specific using agency, the agency should be represented by personnel most familiar with the need.

Any written summary of the conference should be furnished to each prospective bidder or offeror, and be made a part of a public bid file. However, no discussion at the conference should be construed as making any substantive change in the solicitation unless the change is incorporated in writing by an addendum.

When the conference is held after issuance of the solicitation and before submission of bids, and especially where the conference is linked to site examinations or a tour of premises, the purchasing office may designate that attendance at the conference is a prerequisite to the consideration of any bid or offer submitted.

Policy and procedures for conducting bidders conferences should be set forth in writing by the central purchasing office, although this is now the case in less than 30 percent of the states.

CHANGES IN SOLICITATIONS

Circumstances can arise which call for a change in the solicitation for bids or proposals. The majority of these can be accomplished by issuing addenda or amendments to cover such matters as altering quantity or delivery requirements, modifying specifications, extending the date for opening, etc. The addenda are mailed or otherwise directed to all prospective bidders known to have received the solicitation, and a signed copy of any addendum should be attached to the bid submitted as indication it was received and noted. In rare instances where time does not permit this procedure, an addendum may have to be communicated to prospective bidders by telegram or telephone, in which case receipt of the information should be acknowledged as a part of the bid submission.

Care must be exercised at all times not to give a bidder pertinent information, verbal or written, regarding an invitation that is not given also to all other prospective suppliers.

The addendum or amendment procedure should be used also when a solicitation is cancelled, either before or after the opening of bids.

Another change relating to solicitations may involve the length of time provided or allowed after opening for the consideration of a bid or offer. Where testing or other factors delay evaluation such that the acceptance time may expire, the purchasing office should be authorized to request the bidder to allow an extension sufficient to make the determination for award.

RESPONSIBILITY OF BIDDERS

Some two-thirds of the states currently have written guidelines for determining whether a bidder is responsible. Some of these are delineated by statute, others by rule or regulation or administrative procedure. The Model Purchasing Ordinance of the National Institute of Municipal Law Officers lists 15 factors to be considered in determining responsibility. The American Bar Association Model Procurement Code refers in *Commentary* to "financial ability (of the bidder), resources, skills, capability, and business integrity necessary to perform the contract."

The ability required to fulfill a contract, including the rendering of subsequent and continuing service if specified, varies substantially with the nature, size and complexity of different contracts. A bidder who may be responsible in connection with one contract may not be responsible with respect to a different, or larger, one. A prequalification procedure for the bidders list can be helpful in making these distinctions.

During the consideration of bids and offers, it may be advisable or necessary to obtain information to assist in determining responsibility. Refusal by a bidder to furnish such information when requested, or failure to supply it in time, can be grounds for a finding of nonresponsibility.

Purchasing law should not permit award of a public contract knowingly to a nonresponsible bidder or offeror. It is not desirable for a statute to attempt to spell out all factors relating to responsibility, but it should require that standards of responsibility be set forth by rule or regulation.

When a bidder or offeror would be awarded a contract except for a finding of nonresponsibility, the reasons for the determination should be documented as part of the file and a copy of the determination sent to the bidder or offeror.

CONSIDERATION OR REJECTION OF BIDS AND PROPOSALS

Statute law should provide that any and all bids or proposals may be rejected in whole or in part in accordance with rules and regulations formulated for this purpose. The rules, regulations, and subsequent actions must, however, be based upon sound reasons. Bids may not be rejected arbitrarily, or by whim or caprice.

Technically, any bid that is not accepted is considered to have been rejected. Rejection of an individual bid because of nonresponsiveness, nonresponsibility, or high price is generally understood. In some cases, these reasons might apply also to all bids received. Other causes for rejection of all bids or offers can include lack of competitiveness because of apparent or suspected collusion; errors in specifications or indication that revisions would be to the public advantage; the solicitation not

providing adequate criteria for the evaluation of responses; limitation or lack of available funds; and changes in the intended project, or determination that the proposed requirement is no longer needed.

A bidder has the right to have his offer receive fair and equitable consideration. However, there are circumstances under which a bid or offer may be submitted that can adversely affect its consideration other than conventional factors associated with responsibility, responsiveness and price.

Only One Bid Received

Where only a single acceptable bid or proposal is received, the purchasing office should inquire as to the reasons for the lack of competition. Based upon the information developed, the single bid may be accepted or rejected. The public is entitled to available competition, and if reasonable competition can be expected by resolicitation, that course can be taken. On the other hand, if the single bid submitted is acceptable and advantageous to the purchaser, and other potential competitors had full opportunity and chose not to respond, the one bid can be accepted.

Alternate Bids

Alternate bids, and two or more bids from the same vendor, can take many forms and present perplexing questions. Often alternate bids are simply nonresponsive and cannot be accepted. Otherwise, as a general rule only the base bid submitted should be given consideration unless the invitation specifically provides for alternate offers. Where alternates result from ambiguous or faulty specifications or other deficiency of the invitation, all bids should be rejected and the solicitation rewritten and reissued.

"All-or-None" Bids

A bidder sometimes unilaterally imposes a condition that the bid is as an "all-or-none" offer; that is, any acceptance of the bid must include all items offered. Such a condition affords the bidder an inequitable advantage and contradicts the normal provision that the purchaser may accept any item or group of items in the invitation. Bids submitted with this condition should be rejected except where the solicitation invites all bidders to compete on an "all-or-none" basis by so providing in the solicitation.

A similar limitation is imposed when a bid or offer is conditioned upon receiving the award of both the contract in question and another contract. Such "tying" bids together is another means of seeking an undue competitive advantage, and unless specifically permitted by the invitation such bids must be considered as not acceptable.

NEGOTIATION FOLLOWING REJECTION

When it is in the public interest to reject all bids or offers, in whole or in part, the purchasing statute should authorize, among alternative actions that may be taken, the negotiation of a contract to better advantage in the open market. This course is especially necessary when collusion or other anticompetitive practices thwart normal competitive procedures and there is evidence resolicitation would be a waste of time and effort.

CHANGES IN CONTRACTS

Changes during the performance of a contract are usually accomplished by issuance of a change order, or a modification to a purchase order; by issuance of a stop-work or termination notice; or by a renewal or extension of the contract. Changes are more common and permissible in construction and public works contracts than in contracts for equipment, supplies, and services.

The central purchasing office should have standard forms for issuing change orders and modifications to purchase orders, and should develop standard contract clauses covering price adjustments, changes in quantity, stop-work orders, termination, and liquidated damages. The standard clauses need not be used exclusively and should be adapted as may be needed for different circumstances and varying market conditions.

Termination can be brought about by default on the part of the contractor or for the convenience of the purchaser. It often involves monetary damages or cancellation charges, and how these will be determined and applied should be set forth clearly by contract clauses. The authority of a public officer to contract for damages or penalties should be ascertained specifically in each jurisdiction. This can be a perplexing legal question. In many jurisdictions the purchasing officer may lack necessary constitutional or legislative authorization to agree to or pay such things as termination charges, liquidated damages, or finance charges for late payment of invoices.

Other aspects of contract changes also need careful review as to legality. For example, requirements for competitive bidding can usually be protected if an increase in quantity under a contract for equipment, materials, or supplies does not exceed 10 percent. On the other hand, where competitive bidding is required, courts have not allowed the renewal of contracts by *mutual* agreement between the jurisdiction and the contractor. This action has the effect of noncompetitive negotiation, and to adhere to requirements for competition, a provision for renewal of contracts should be only at the option of the state or local government, with documentation that the renewal is in the best interest of the jurisdiction.

OTHER GENERAL CONSIDERATIONS

Deleting Items From Construction Contracts

As noted earlier, substantial economies often are realized by purchasing various types of equipment and supplies separately rather than including them in building contracts. Such items range from light bulbs and tubes to venetian blinds and x-ray equipment. Statute and implementing rules and regulations should authorize central purchasing to determine when equipment and supplies should be deleted or acquired separately from a contract for construction.

Advance Payments, Progress Payments

As a general rule, payments in advance of work performed should be avoided in public contracting. Responsible bidders and contractors are presumed to have the financial resources to undertake the contracts for which they bid. Progress and partial payments for work completed, however, are in order for some types of requirements particularly for a substantial and costly item where the contractor may have to obtain expensive and specially fabricated components, as in the purchase of a large crane for a port authority. Progress payments should not exceed the value of work performed at the times of payment, with a reasonable amount of the total contract price withheld until delivery and final acceptance of the product or service contracted for.

Any advance or partial payment should be considered only to the extent legally permissible and where protected by adequate collateral.

Installment Purchases

Several types of equipment carry such high prices that outright purchase may not be feasible or possible at the time the equipment is needed. Among these can be complex hospital diagnostic equipment and computer installations. In such cases, installment purchase may be the logical and satisfactory method of acquisition, and central purchasing should be authorized to contract for installment payments, including payment of interest. At the same time, the authorization should make the administrative head of the agency for whom the purchase would be made responsible for certifying to central purchasing that: (a) the request for an installment purchase is not to avoid the appropriations or budgetary process; and (b) statutory or other prohibitions are not being violated. To effect an installment purchase properly, the solicitation must provide for installment payments and for termination of the contract if funds for continuation are not available.

Confidentiality

The purchasing process has to request or require information from time to time that can be correctly construed as proprietary. Such information may relate to financial records and responsibility, manufacturing drawings, formulas and processes, agreements with suppliers and subcontractors, test data, etc. To promote competition and protect valid interests, the purchasing statute should clearly authorize that such data can remain confidential. The competitive bidding process should not be a means for competitors to obtain private or similar information that is not otherwise normally available.

Rules and regulations implementing the statutory authorization should provide that bidders and offerors may request that certain material they submit remain confidential, with the final decision as to validity of a request resting with the chief purchasing officer.

8. Acquisition: Competitive Methods

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Establish the amount above which competitive sealed bidding, including multi-step bidding or competitive negotiation is required, or authorize the amount to be set by rule.

State that competitive bidding is the preferred method of procurement and use of any other method requires written reason by the chief purchasing official.

Require competition in making small purchases, subject to applicable rules.

Authorize waiver of minor irregularities and require rules governing mistakes in quotations, bids, and proposals.

Require that information conveyed by public reading, tabulating, or abstracting of bids at public opening be a public record at the time of opening, and that bid documents and remainder of the file be made publicly available following award of contract, subject to provision for confidentiality of proprietary and related data.

Require adoption of rules governing telephone and telegraph bids and late bids.

Require that services be acquired through one of the established purchasing methods under rules provided therefor.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Identify and define competitive processes to carry out the several procurement methods.

Stipulate that ideas or information submitted in a technical proposal under multi-step bidding and competitive negotiation cannot be used in negotiating with another offeror.

Require the use of competitive methods where possible in the purchase of services, and stipulate that in obtaining professional services competence is to be given greater consideration than price.

Require that a public record be kept of vendors solicited and responses received on competitive quotations.

Recommended Practices

Seek at least three quotations on small purchases.

Use competitive sealed bidding if advantageous even when amount of purchase is less than required for that procedure.

Time stamp bids and proposals upon receipt.

Have one or more witnesses present at bid openings.

Once notification has been given to submit best and final offers under competitive negotiation, extreme care should be exercised to adhere to this condition and not to extend the time or call for new submissions except under peremptory circumstances.

Competitive procedures used for public contracting by state and local governments fall broadly into three categories: competitive sealed bidding (which includes multi-step bidding); competitive quotations (or informal bidding); and competitive negotiation. In the following discussion, these are taken in the order of importance accorded them in law or in current practice, while recognizing that the use of multi-step bidding and competitive negotiation is increasing.

COMPETITIVE SEALED BIDDING

This procedure is also referred to as "competitive bidding" (e.g., NIMLO Model Purchasing Ordinance), "formal advertising" (Federal Procurement and Acquisition Regulations), and often generically as "sealed bidding" or "formal bidding." These terms are synonymous, with the exception of "formal advertising." Certain fundamental differences have developed between competitive bidding as practiced by state and local governments and formal advertising as practiced by the federal government.

Competitive sealed bidding is the standard method for acquisition of goods and services by state and local governments. As the commentary accompanying the American Bar Association Model Procurement Code points out: "Competitive sealed bidding . . . is the preferred method of procurement." It is usually a statutory requirement, and seldom is any other method authorized as a normal procedure. This applies to definite quantity and indefinite quantity contracts alike. In general, purchase by negotiation is permissible only under limited cir-

cumstances when competitive bidding is not practical or possible.

Once a need is established, whether for an individual, "open market" purchase, a schedule purchase, or a term contract, central purchasing initiates the competitive sealed bidding procedure by preparing and issuing an Invitation for Bids (IFB). The IFB should be designed with four overall purposes in mind: (1) to protect the public interest; (2) to attract competition for furnishing the product or service; (3) to allow prospective bidders to compete on an equitable basis; and (4) to serve as the essence for a contractual agreement upon award. The latter can be done so effectively that the purchasing office need only add its signature as acceptance of a bid to effect a contract and no separate document is necessary unless legally required.

There should be no statutory or regulatory conditions or prerequisites for the use of competitive sealed bidding. In contrast to the federal system, state and local governments do not impose conditions for use. And in this connection, it is significant to note that state and local governments typically make some 85 percent or more of their purchases under competitive bidding, whereas estimates place purchases by the federal government under its formal advertising procedure at less than 10 percent in dollars expended and less than 15 percent in number of transactions.

Conditions should be prescribed, however, by statute or rule and regulation for using any method other than competitive sealed bidding.

It is customary among state and local governments that competitive sealed bidding is mandatory when an expenditure is expected to exceed a designated dollar amount. This applies by law or policy in all but two of the states. The amount varies widely, from $300 in one state to $10,000 in two others. The most common figures are $2,500 and $5,000, applicable in 13 states and six states respectively. Reflecting inflationary pressures, the trend is for this figure to increase, and $5,000 appears to be the most likely amount to become prevalent. Requirements for virtually all types of equipment, materials, and supplies, and for many kinds of services, can be purchased adantageously under competitive sealed bidding. For the more complex items, extra care has to be given to determination of evaluation criteria and to the design of the Invitation for Bids.

The IFB contains the purchase description or specifications covering the item(s) needed, the terms and conditions of the proposed purchase, the manner in which bids are to be submitted, the criteria for evaluating the bids, and the place and time for opening the bids. The tone of the transaction and the course of any resulting contract are cast in the IFB. Sufficient time and thought should be given to the preparation of the IFB to promote competition and to reduce or avoid any problems that might be expected to arise after bids are opened. Otherwise, competition may be unduly restricted and the transaction doomed to legal or procedural difficulties.

Requirements for public notice and use of the bidders list for soliciting competition are examined in Chapter 7. An adequate period should be allowed for bidders to receive and respond to the Invitation, which may range from seven days or some other legally prescribed minimum time, to 30 to 60 days, depending upon urgency or the complexity of the procurement. Many jurisdictions have felt it necessary to lengthen the response period because of vagaries of the postal service.

Prior to issuing the IFB, or after issuance and before opening, one or more conferences may be held with prospective bidders, if needed and as discussed in Chapter 7. Subsequently upon receipt, bids should remain sealed and kept in a secure place intended to prevent them from being misplaced, lost, or tampered with, until the time of opening.

Control, Opening, and Tabulation of Bids

Responsibilities and procedures for the receipt and control of bids should be set forth in writing. The procedures should require that all bids be date and time stamped, particularly in that many bids are hand delivered and bear no postmark. Since formal bids, by rule of law, must remain sealed until the bid opening, proper identification on the outside of the bid envelope is important and should include the solicitation number, the opening date, and the bidder's name or vendor number. The use of vendor identification numbers facilitates maintaining records of bidders who reply and those who do not.

Some large purchasing programs delegate the receipt and control of bids to a central records or services section within purchasing, or even to an administrative unit with no buying responsibility. One or two states go so far as to require that copies of bids be sent to both the purchasing department and the state auditor. While such a requirement offers an additional check and balance, it has distinct disadvantages. A bidder could inadvertently fail to send a copy to the auditor, or for a variety of reasons the bid could arrive late at one place or the other. Such occurrences invariably cause problems, engender complaints and appeals, and can result in the disqualification of bona fide low bids which otherwise provide savings for the public.

State and local governments can seldom afford sufficient personnel to allow for the complete segregation of bid-handling duties. In most governmental units, therefore, bids are received by the purchasing unit, often by the purchasing agent who is handling the solicitation.

The sealed bid process provides for public openings which can be attended by any interested person, as well as by bidders. This openness reduces possibilities of collusion and favoritism and fosters public confidence in the purchasing system.

Though bidders and the public are invited to attend bid openings, frequently none do so. It is prudent, therefore, to require that bids be opened in the presence of one or more witnesses. The opening should consist of announcing to any interested party such information as the name of each bidder; the price, the manufacturer, and catalog number of the items offered; and the deliveries and terms of payment submitted. While the information announced will vary according to the nature of the procurement, it should be sufficient to identify the bid for the purposes of an abstract.

State and local governments use several different means for recording the bidders and their bid prices. As a general rule, bids should be tabulated when opened, but there are times when this is not practicable. For example, some bids cover hundreds of separate items, and the time required for recording all prices on a separate tabulation sheet is prohibitive. Alternate procedures, therefore, are necessary. Some jurisdictions have tabulations compiled by a computer. Others use various duplicating techniques. In some cases, the Invitation for Bids is formatted so that the commodity and price sections of the bids are detachable and can be laid out for visual comparisons. In other instances, the bid sheets themselves are strung together in an overlapping fashion to show the name of the bidder, each item on the IFB, and the item price offered by each bidder. Either the original or a copy becomes a permanent reference if questions arise concerning a particular solicitation. On some types of purchases, detailed tabulations must be prepared during the course of bid evaluation.

Whatever the case, a public record should be made at the time of opening of the information that is publicly announced, or would be announced if persons were present. Tape recording the bid opening can provide such a record. Any subsequent tabulations should be a part of the public bid file.

Public Disclosure of Bids

Records, tabulations, or abstracts made of bids at the time of bid opening should be available as public information at all times. Bid documents themselves should be made public information *following award of a contract,* subject to provisions for confidentiality of proprietary and related data.

Telephone and Telegraph Bids

Many jurisdictions give consideration to bids submitted by telephone and telegram or wiregram when certain conditions are met. Other jurisdictions do not consider such bids.

There is no reason that law or policy must exclude such bidding if the submissions are governed by appropriate rules. Allowing the bids can provide additional competition, can compensate in some measure for faulty mail service, and especially can be helpful to small businesses which frequently have to obtain prices, delivery, and other necessary information from manufacturers or other principals before they can prepare and submit a bid. When telephone and telegraphic bids are permitted, written rules should require that a telephone bid be confirmed by wire in a manner that makes it a telegraphic bid, and that a telegraphic bid must be received in hard copy at the purchasing office prior to the time set for the bid opening. The rules should further require: the telegraphic bid to refer specifically to the applicable Invitation for Bids; to set forth the items, quantities, prices, and deliveries offered; and to state that the bid complies with the terms and conditions of the Invitation, and is being confirmed by submission of the bid documents properly executed. Conditions governing any consideration of telephone/telegraph bids should be part of the standard procedural conditions of the IFB.

Advancements in the field of telecommunications suggest there soon will be other acceptable means of soliciting and submitting bids, including transmission via electronic terminals, with or without hard copy.

Modifying or Withdrawing Bids

The modification or withdrawal of bids should be permitted at any time prior to bid opening. After bids are opened, requests for modification or withdrawal should be subject to the rules governing mistakes in bids.

Late Bids

Attitudes and policy vary considerably among state and local governments as to whether bids received after the time of opening may be considered for award. Some jurisdictions return any late bid to the sender, unopened. Others have effective rules under which consideration of late bids is possible. Many jurisdictions operate somewhere in between these well-defined positions.

The subject rarely is addressed by statute, and it need not be. But it should be covered by specific rules arrived at with the assistance of the attorney general or other appropriate counsel.

Without law or policy to the contrary, courts do not deny the consideration of late bids if the bidder took reasonable steps to submit the bid in due time and failure of the bid to be on hand at the time of opening was not the result of negligence or other fault of the bidder. The fault may lie entirely with handling of the bid in the purchasing office, or with the post office or other carrier, or with a government employee who gave incorrect information, or lateness may be caused by an act of God. In such cases, consideration of a bid would not represent favoritism, collusion, or fraud in awarding a public contact, and arbitrarily denying consideration denies the public the benefit of competition submitted in good faith.

If a jurisdiction seeks to formulate a policy to consider late bids, the governing rules should be clear on three points: the bid has to be dispatched or otherwise out of possession of the bidder or its agent prior to the time of opening; subsequent delay is at no fault of the bidder; and evidence of these facts is at hand and is documented as a public record.

Mistakes in Bids

Mistakes in bids, actual or alleged, are not uncommon, and can present serious problems. The essential rule is that no change or correction be permitted which would prejudice the interest of the public or would be unfair to other bidders. For this reason, remedies for mistakes in bids become less available as the procurement process moves forward.

Prior to bid opening, a bidder may correct a mistake or withdraw the bid. After bids are opened, but before award, a mistake may be corrected only if it is minor and the intent of the bid is obvious; that is, only if the bid is in substantial compliance and the correction does not improve the bidder's competitive position. "Substantial compliance," the meaning of which is discussed further in Chapter 10, refers to deviations or errors that are not material and do not invalidate the legitimacy of the bid. On these grounds, a defect in form, but not substance, may be waived or a multiplication may be corrected in the extension of a price. Where a mistake or omission is not evident on the face of a bid, and the bidder points out an error with clear and objective evidence prior to award, it is in order to allow the bid to be withdrawn, but not corrected. Where bid security applies, permitting withdrawal would normally be without forfeiture of the security.

Any remedy for a mistake becomes more difficult after award of a contract. The general view of the courts is that a mistake in a bid which comes to light at this point does not relieve the contractor from performance in accordance with the contract award, unless the error is so substantial that refusal to grant relief would be unconscionable.

Mistakes in bids occur in various ways and frequently enough to raise critical questions. *Written rules and procedures are necessary to protect the public interest and the integrity of the competitive bidding process, and to maintain fairness to all bidders.* The rules and procedures should be based on the legal principle that in public contracting equity has precedence over an advantage in price or similar factors.

Public policy does not seek public gain from mistakes by bidders. To help prevent unnecessary problems, when the purchasing office sees an apparent error in a bid, good practice calls for bringing it to the attention of the bidder and resolving the matter before further consideration of the bid for award.

COMPETITIVE QUOTATIONS

Competitive quotations is the customary method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transaction designated as an "informal purchase," "informal bidding," or "small purchase." Surveys indicate that in approximately 90 percent of the states, small purchases require obtaining competitive quotations.

The quotation method differs from sealed bidding in procedure but not in principle or purpose. The objective common to both methods is to obtain goods and services that are most economical for the purposes intended, and with the principles of fairness and impartiality both to bidders and regarding the needs of using agencies remaining the same. To the extent that time and circumstances permit, competitive quotations is the appropriate method for making emergency purchases, irrespective of the dollar amount involved.

A number of requirements associated with competitive sealed bidding need not apply to competitive quotations. Among these are public notice, the public opening of responses, strict adherence to a time of opening, and designating in the solicitation the criteria to be used in evaluating the responses.

The time and administrative costs of purchases made by means of quotations are less than by the other competitive methods. This fact, together with the procedure being less visible, occasions temptations to divide purchases into smaller amounts so they can be made under the informal procedure. Any such practice should be specifically prohibited by statute, and the central purchasing office must further guard against it by continuous surveillance of purchase requisitions and copies of purchase orders issued by using agencies.

Central purchasing offices characteristically delegate various purchasing authorities to using departments and agencies. Included in these are certain small purchases. All of the states make such delegations in amounts that vary from $35 to $5,000 but with most of them in the $200-$500 range. Where central purchasing has entered into either a definite or indefinite quantity contract for an item or type of item, however, agencies must obtain their needs under the contract in some 90 percent of the states, and local quotations are not permitted. Also, jurisdictions which operate central stores or warehouses have requirements to the effect that stocks must be used rather than using agencies making individual small purchases of the same or equivalent items.

Although there is usually a general requirement for obtaining competition in making small purchases, seldom are procedures for doing so adequately spelled out. Evidence indicates purchases often are made with more concern for convenience than competition. For very small purchases, only a minimum of competitive effort can be justified, but beyond this level reasonable and

adequate competition should be mandatory. The lack of formality allowed for competitive quotations call for special care to assure adherence to sound practices. The purchase description should avoid favoring a particular product, and a representative number of prospective suppliers should be solicited even if the bidders list is rotated. At least three competent responses should be anticipated, to the extent practicable, and they should be evaluated to obtain optimum economy. Exercise of favoritism or user preferences should be prohibited under small purchase procedures as under any other procurement method. Quotations should be submitted in writing or confirmed in writing to the extent practical. If only oral quotations are obtained, they should be recorded and records of all quotations maintained for audit purposes and as a public record.

The trend to increase the amount of expenditure under which small purchases may be made gives emphasis to the need to improve competitive quotation procedures. In many instances, the perceptive purchasing agent uses the sealed bidding procedure for a requirement that under law or rule could be made as a small purchase.

MULTI-STEP SEALED BIDDING

Multi-step bidding is a recently developed procurement method that is rapidly becoming accepted as advantageous for some types of requirements. Approximately 70 percent of the state purchasing programs have begun to use it, but its application likely will continue to be selective and relatively infrequent. Surveys indicate that 44 percent of local governments use the method.

The procedure usually involves two steps, combining certain aspects of competitive sealed bidding and competitive negotiation. It can be effective for some of the more complex procurements, such as acquiring a medical records system that includes the training of personnel, wherein different approaches for doing the work can be offered and evaluated together with the relative performance capabilities of the bidders. The method can be advantageous also in the acquisition of specialized services.

Multi-step bidding uses an Invitation for Bids to which the response in the first step consists of a technical proposal stating how the task would be accomplished and the bidder's experience and resources for carrying it out. The proposal does not include prices. Prices are submitted as the second step, or if so requested they may be furnished with step one but in a separate sealed envelope which remains unopened while technical proposals are evaluated. The Invitation for Bids may be preceded by an earlier, exploratory step in the form of a Request for Information (RFI) from potential suppliers. The RFI should indicate clearly that it does not constitute any intent for commitment on the part of the jurisdiction.

In preparing an invitation for multi-step bidding, the specifications, product description, or statement of work should be written in terms of the purpose for which the product or service is needed and the results desired; i.e., a performance specification inviting competing ideas as to how the requirement can be met most effectively and efficiently.

The technical proposals may be opened publicly, but only to disclose the names of the bidders, not any information contained in the proposals.

Evaluation of the technical proposals is the same as for competitive negotiation, except there is no discussion of price. Following evaluation, prices are invited from all bidders whose technical proposals are acceptable, or if prices have already been submitted, the separate sealed envelopes are opened. If the negotiation of technical proposals results in alterations or other changes, bidders are allowed to submit revised prices before any prices are opened.

Negotiation regarding technical proposals is not necessary if fully acceptable proposals are received initially. The procedure then moves directly to the next step of obtaining and considering prices, with award made as under competitive sealed bidding.

COMPETITIVE NEGOTIATION

Traditionally the use of competitive negotiation among state and local governments has not been prohibited by law or policy; it simply has not been recognized or authorized, and has not been available as a procurement procedure. Noncompetitive negotiation is permitted under emergency conditions and for sole-source requirements; otherwise, competitive quotations or competitive sealed bidding are the methods prescribed by purchasing law. Exception to this can be found in some jurisdictions when competitive bidding fails to produce satisfactory responses, and there is statutory authorization to reject all bids and make the purchase by means of negotiation in the open market.

A number of jurisdictions, particularly those adapting aspects of the ABA Model Procurement Code, are recognizing competitive negotiation as a contracting method for some types of requirements. For the preponderance of needs, however, negotiation is not favored as a procurement method by the public or by purchasing officials in state and local governments. It suffers from elements of secrecy both before and after the award of a contract. The growing use of multi-step bidding, which serves much the same purposes with a more open procedure, may deter further adoption of competitive negotiation, except perhaps in contracting for professional services or for requirements where the character of a product is more important than its relative cost.

The principal distinction between sealed bidding and negotiation is that the bidding process requires that tenders be evaluated and awards made solely on the basis of information contained in the bids at the time of opening. No substantive changes, or any changes which would

affect determination of award, are permitted either in the nature of the offer or in price. Negotiation, on the other hand, allows modification and alteration of both content and price after offers are submitted and during the evaluation process.

Otherwise, many procedural characteristics of competitive bidding can apply also to competitive negotiation. For example, competitive negotiation involves public notice and the issuance of a solicitation, designated as a Request for Proposals (RFP), which establishes the time and place at which the proposals will be opened. There are, however, also differences. The Requests for Proposals may be opened publicly, but only the names of the proposers should be revealed, not prices or other information. Under federal practice, and as recommended by regulations under the American Bar Association Model Procurement Code, the process is more uncommunicative—there is no public opening, and after award of a contract, the contents of neither the successful nor unsuccessful proposals are available as public information. This degree of secrecy appears unnecessary and inadvisable if there are suitable provisions for confidentiality of trade secrets and similar information.

The RFP must include: a description of the item or service desired; the criteria, given in order of their relative importance, that will be used in evaluating the proposals; and a statement as to when and in what manner prices are to be submitted. Also, the RFP should provide that after proposals are opened, they may be discussed with the offerors if the purchaser deems it advantageous to do so. In this context, "discussion" means clarification, modification, and negotiation, or any of these; and if discussions are conducted, all offerors whose proposals are found to be acceptable or reasonably susceptible to being made acceptable must be given equal opportunity to negotiate and revise their proposals. Award may be made on the basis of the proposals as initially submitted, without negotiation, but if this is not done, no information from a competing proposal may be revealed to another competitor during the course of discussion. Law or rule should prohibit any type of auction practice or allowing the transfer of technical information, which undermines fair competition.

Prior to issuing the RFP, the evaluation factors should be developed carefully in relation to their importance to the proposed work or project. Frequently, such criteria can be divided into three main categories: technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price; and managerial capability. As in the case of competitive sealed bidding, only criteria as designated in the solicitation can be considered in evaluation of award.

Any committee or team that may participate in the evaluation should be selected and briefed before the Request for Proposals is issued. The group should include representatives of the using agency and central purchasing office. The proposal evaluation criteria should be looked upon as the standards that measure how well an offeror's approach meets desired performance requirements. Such standards should seek to match the evaluation of proposals against objective norms rather than against each other. If a scoring system is devised, it must be impartially applied to each proposal.

The proposal evaluation process normally should include price/cost analysis. Price analysis represents an evaluation of proposed prices without regard to the separate cost elements and proposed amount of profit. Techniques such as comparing the prices offered with each other, with published price lists, and with independent estimates can be used. This analysis may be sufficient when there is adequate competition and prior experience with the item or service being purchased. Otherwise cost analysis is essential. Cost analysis consists of a review and verification of the cost data supporting each element of proposed cost. The cost data that will be allowed must be determined before the RFP is issued.

Negotiations should be conducted individually with each qualified offeror and should be documented by minutes of each session. The offeror may modify or withdraw his proposal at any time prior to the submission of "best and final" offers.

Best and Final Offers

Following negotiations, a time must be set for all offerors whose proposals have been deemed acceptable to submit proposals including prices. Changes are not allowed in proposals or prices after best and final offers are received, unless there is provision in law or rules to make a finding that re-submission would be in the public interest. In lieu of furnishing a best and final offer, an offeror may choose to let stand his initial proposal and any price already submitted but unopened.

Following award of a contract, explanations should be available to any unsuccessful proposer as to why his proposal was not accepted.

CONTRACTING FOR SERVICES

Substantial increases in recent years in expenditures for services, both in actual dollars and in relation to other types of acquisitions, and the need for unifying policy and procedures in obtaining them, are appropriately bringing new responsibilities to central purchasing.

Statutes traditionally have been silent on the purchase of services, or have referred only to such services as water, power, and similar types supplied by public utilities. Consequently, it has been habitual for departments, institutions, and agencies to contract individually for their needs for many kinds of services. This approach is changing rapidly, with central purchasing offices having become increasingly involved in the acquisition of services, including professional services in two-thirds of the states.

Services can be divided broadly into two types: one relates to the kinds of proprietary services performed by an independent contractor requiring specialized knowledge, experience, expertise, or similar capabilities wherein the service rendered does not consist primarily of acquistion of equipment or materials. In this category are pest control services, laundry services, catering services, security services, and maintenance of equipment. The other type relates primarily to the services of professionals, such as physicians, ministers, architects, dentists, engineers, accountants and consultants, scientists and artists.

Sealed competitive bidding is usually an adequate and satisfactory method of contracting for the first type. By contrast, controversy abounds as to appropriate means and methods of contracting for personal and professional services. Some professional groups argue that their fees should be noncompetitive and that price should not be a factor in evaluating proposals for their services. The questions are widely debated, numerous attorneys general opinions have been sought, and the issues in differing contexts have been taken to the courts. Points of dispute relate variously to antitrust matters, professional prerogatives, group ethics, artistic exceptions, and suitability of proposal evaluation criteria.

The purchasing view of contracting for personal and professional services is consistent with its overall view that in public contracting the public interest is paramount. The price or fee to be charged by prospective contractors is a valid consideration in evaluating competitive offers; for sole source procurements, a price or fee should be subject to cost and price analysis. Personal and professional services can be obtained adequately and equitably by use, according to the nature of circumstances surrounding the requirement, of one of the established procurement methods: competitive sealed bidding, competitive quotations, multi-step sealed bidding, competitive negotiation, emergency purchases, and sole source procurement.

In soliciting competitive responses, the statement of work and the evaluation criteria must be set forth clearly in the solicitation document. The competitive negotiation procedure or multi-step sealed bidding will usually be the most suitable purchasing method. Evaluation of proposals should give due consideration to the professional competence of the offerors, the quality of the proposed plan or product for the purpose intended, and the overall cost of the work, including all fees and other charges. The amount of a fee should rarely not be the determining factor for award.

Pre-proposal conferences often can facilitate receiving offers that are better prepared, more acceptable, and more competitive with respect both to work performance and overall cost.

For any type of contractual service which extends over a period of time, the solicitation document and the contract should specify monitoring points at which the progress and satisfactoriness of the work will be evaluated and corrective measures taken as may be needed. This experience, together with an overall performance evaluation upon completion of the contract, should be made a part of the contract file.

9. Acquisition: Noncompetitive and Limited-Competition Purchases

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Require rules defining conditions under which purchases may be made by other than competitive sealed bidding, multi-step sealed bidding, or competitive quotations.

Provide that the chief purchasing official has final determination of waiver of competition and require that the determination be in writing.

Require negotiation on non-competitive purchases and price or cost analyses under non-competitive negotiation, all in accordance with applicable rules.

Define "emergency" for purchasing purposes and require rules governing such purchases, including written determination of circumstances and obtaining competition to the extent feasible.

Require rules governing the handling of unsolicited offers, including approval of central purchasing prior to any evaluation or acceptance of such an offer.

Require approval by central purchasing of the quality and price of items produced by one agency for sale to other agencies.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Identify circumstance permitting waiver of competition or allowing limited competition.

Vary requirements for documentation according to the nature of a waiver or the limits on competition; e.g., routine documentation for a purchase for resale contrasted to explicit documentation for a sole-source purchase.

Set forth authorities and procedures applicable to using agencies and to central purchasing in making emergency purchases.

Establish policy for making small purchases.

Recommended Practices

Central purchasing should issue written procedures requiring its prior approval for various types of purchases involving waiver of competition or limited competition.

Small purchase procedures should be set out in reasonable detail, including soliciting competition in writing or by telephone, and the documentation required.

Purchase order forms should provide a space for reference to the basis of the order; i.e., the quotation number and date, the IFB or RFP number, the applicable term contract, etc.

Central purchasing should have a systematic way of reviewing and approving or denying the quality and price of items produced by an agency, e.g., a correctional industry, for sale to and use by other agencies.

Rotation of bidders list should be prohibited or avoided except for small purchases.

Geographic purchasing should be used under those conditions which favor it.

There are circumstances which require a noncompetitive purchase, and there is a prescriptive method for accomplishing it: noncompetitive negotiation. There are other circumstances, such as emergency conditions, which warrant limited competition. This chapter discusses both noncompetitive and limited-competitive purchases.

Aspects of these purchases place special burdens on the central purchasing office to establish responsibility and provide safeguards against abuse. Central purchasing should make final decisions with respect to all sole source purchases, and to other noncompetitive purchases where practical, and should have direct involvement in determining the validity of cost and pricing data.

NONCOMPETITIVE PURCHASES

Competition should be the central thrust of public contracting. However, competition is not always possible or practicable. In such cases, central purchasing must have adequate authority under law to proceed with, or to authorize, a purchase. Operation of government pro-

grams cannot be threatened because it is not feasible to make a purchase on a competitive basis. The proper and effective exercise of this authority necessitates rules governing the waiver of competition.

Waiver of Competition

The term "waiver," rather than "exception" or "exemption," is recommended. The latter terms are better applied to specific commodities and services than to general conditions or circumstances.

Rules or regulations should recognize the following conditions under which competitive solicitations may be waived:

- A needed product or service is available from only one supplier (sole-source).
- A particular product or service is wanted for experiment or trial.
- Products are bought for over-the-counter resale.
- Additional products or services are required to complete an ongoing task.
- Items are produced by correctional industries or other government agencies.
- The amount of a purchase is too small to justify the expense of soliciting quotations.
- A purchase is made in response to an unsolicited offer.
- A purchase is made from, or a sale made to, another unit of government.
- The purchase of a used item is advantageous and the item is available only on short notice and subject to prior sale.

The rule or regulation should state that although there is provision for waiver, competition is required wherever practicable and that except where it applies to small purchases, the basis and reasons for each waiver shall be documented as a public record. Merely citing a condition for waiver, without supporting information and justification, is not adequate reason or documentation.

In some jurisdictions, waivers exceeding a specified dollar amount are reserved to the governor or an officer of cabinet rank in a state, or the mayor, county administrator, or a commission at the local level. The best practice is to have such determinations made by the central purchasing office in accordance with suitable rules and regulations and supported by written reasons for each case. Request for waiver by a using agency should be accompanied by an explanation of need.

The subject of waiver points to a significant difference between state and local government purchasing and federal procurement. The latter customarily has allowed waiver from competitive sealed bidding, or "formal advertising," on the grounds of inability to write a technical specification which permits award primarily on the basis of acquisition price. Experience of state and local government purchasing finds no justification for such a provision, for two basic reasons: (1) a technical, or unique, specification is not necessary for the majority of needs—other types are more satisfactory—a unique specification is needed only for public works projects and other custom work; (2) several factors beyond acquisition price, such as suitability, purpose for which intended, and overall economy, should be considered in determining award under competitive sealed bidding. In addition, practice indicates the federal provision for waiver lends itself to abuse. Consequently, due to an out-moded and overly stringent view of competitive bidding, federal purchasing has found itself without an effective way of buying commerical products and resorting to obtain them noncompetitively through unlimited "multiple award schedules."

This distinction is emphasized because of longstanding lack of understanding among both federal, and state and local government officials as to certain fundamental dissimilarities in their procurement concepts and methods. The lack of understanding, especially with respect to the use and application of competitive bidding, "most-favored-customer" pricing clauses, and "multiple awards," has adversely affected communication between federal, state, and local government agencies, including administration of grant programs.

Sole Source Purchases

Sole source purchases arise from a number of circumstances, ranging from the absolute to the feasible, practicable, or advantageous. Among them are:

- The purchase of equipment for which there is no competitive product, such as a one-of-a-kind oscilloscope, and which is available only from one supplier.
- The purchase of electricity, natural gas, and other public utility services which are natural or regulated monopolies.
- The purchase of a component or replacement part for which there is no (commercially available) substitute, and which can be obtained only from the manufacturer.
- The purchase of an item where compatibility is the overriding consideration, such as a dictation transcriber for an existing system.
- The purchase of a used item, such as a television transmitter tower, which becomes immediately available and is subject to prior sale. Other related conditions involve the purchase of items for resale, the purchase of a particular product for trial and testing, and circumstances under which additional needs develop during the course of a project.

It is important to emphasize that sole source refers to the supplier, not a product or service. Thus, the ability to meet a necessary delivery date or to make on-call repairs at a particular location can create a sole-source—that is a single supplier—condition.

Rules and regulations must require, however, that although a certain item or service may be needed, or condition met, price competition is to be solicited if the requirement can be obtained from more than one source. Justificiation for a sole-source purchase depends upon a needed item being available from only a single supplier under the prevailing circumstances.

Purchase of Government Produced Items

Requirements frequently are available from within the resources of the state or local government. Examples are:

- Items produced or manufactured as a part of correctional programs, such as farm products (eggs, canned fruits and vegetables, etc.), furniture, paints and license tags.
- Items produced on agricultural experiment and test farms.
- Items produced in plants operated by the jurisdiction, such as sand and gravel pits, asphalt, and printing.
- Items produced as by-products of teaching and training programs.

Many states have laws which mandate the use by other state agencies of prison industries products, often with the central purchasing office approving the manufacturing specifications or finished quality of the products and the prices charged. Other than such oversight responsibilities, central purchasing should be authorized to delegate, in its discretion, any authority it may have regarding the purchase of government-produced items.

Rules and regulations should stipulate that private business shall not be solicited to compete in open bidding against government-produced items. Information needed to establish or maintain fair prices for government-produced items can be obtained through informal market inquiries.

Purchases from other Governmental Units

There are occasions which call for purchases, sales, leases, and rentals between two units of government. A state highway department may rent a road grader to or from a county government. A municipality may buy computer time from a federal agency. A state university may wish to purchase a piece of research equipment from a similar university of another state.

The central purchasing authority should review and give written approval prior to any such transaction, not only as to advisability and price but also as to terms and conditions governing the agreement.

Very Small Purchases

Some purchases are too small to justify the time and expense of soliciting competition, or sufficient information is at hand to make it unnecessary, such as a recent similar purchase or a well-established catalog price discount. The purchase may be so small that payment is authorized from a petty cash fund.

In these instances, competition is waived solely for practical reasons. Limits, conditions, and procedures for purchases of this kind, however, should be set forth by the central purchasing office as a part of instructions or delegations applying to small purchases.

Unsolicited Offers

If an unsolicited offer is accepted, it constitutes a waiver of competition and, depending upon a number of factors, could be a purchase from a single available supplier, a purchase made for trial or testing, or the purchase of an item for resale.

Written rules should govern the conditions and procedures for considering, and accepting or rejecting, unsolicited offers. Generally, the rules should require that the offer be made entirely upon the initiative of the offeror; that it be submitted in sufficient detail to evaluate its need and usefulness; that it be proprietary or unique to the extent that competitive solicitations are not practicable; and that its evaluation may be subject to comparisons and tests as determined by the purchaser. In addition, procedures should require that an unsolicited offer not be evaluated, nor any commitment made by a using agency with respect to such an offer, without prior written approval of the central purchasing office.

NONCOMPETITIVE NEGOTIATION

In its broadest sense, negotiation occurs in making any purchase. Noncompetitive purchases, however, imply a need for conducting a definite form of negotiation, and with few exceptions, as in the case of very small purchases, this should be required by statute and rules.

In preparing for noncompetitive negotiation, the purchaser should make a list of specific objectives relating to price, delivery, performance standards, warranty, and contractual terms and conditions. This is particularly necessary for sole source purchases where the purchaser's bargaining position is weakened by the lack of alternatives normally afforded by competition. To compensate for this absence, the purchaser needs to make the business attractive to the seller and display good faith at all times, but to rely on withholding the business if possible in the face of any unreasonable demands on the part of the seller. These guidelines apply whether the negotiations are conducted in person or by correspondence or telephone.

Whatever the manner and outcome, the negotiation should be supported by adequate documentation. Rules governing the confidentiality of data and proprietary information should be observed, and this has special relevance in the consideration of unsolicited offers.

COST AND PRICE DATA

On large contracts that are negotiated without adequate price competition, and on contract modifications, the public interest calls for an examination or analysis of costs and prices to avoid excessive charges. An amount of a negotiated contract or modification above which cost or price data is required, such as $25,000, can be set by statute or by rule or regulation. The latter is better suited to adjustments and alternatives for varying conditions, and is preferred.

Cost data relates to such cost elements as labor, materials, and overhead. Price data has to do with prices of equipment, supplies, and services.

The purchasing statute should designate the conditions under which a contractor shall furnish cost and price data, certified as to accuracy, and provide that the purchasing office shall analyze the data to determine the reasonableness of the negotiated price. Also, the statute should require that such contracts contain a provision for price reduction based on the analysis of the data.

Analysis of cost and price data involves evaluating the various elements to prevent overcharges in connection with the basic contract, with changes that may be made in the contract, or with reimbursement of costs.

To support a need for cost and price data, the statute must give the jurisdiction authorization to audit the books and records of contractors and subcontractors.

LIMITED-COMPETITION PURCHASES

Law and implementing rules need to define conditions under which purchases may be made properly without soliciting full competition. These conditions usually fall into one of three categories: emergency purchases; small purchases; and geographic purchases, with purchase actions appropriate to the circumstances dictated by both factual and practical considerations.

Emergency Purchases

Various purchasing statutes define emergencies in different ways, some too loosely, some too stringently, and some adequately. Essentially, an emergency for purchasing purposes should be viewed as an unexpected and pressing situation requiring swift procurement action apart from regular procedures. In addition to customary references to threats to life and property, this can properly include delay in transportation or unanticipated volume of work, as some jurisdictions explicitly designate.

The purchasing statute should authorize the central purchasing office to determine when a purchasing emergency exists and to obtain needed goods or services advantageously. The determination should be made in writing and be a public record. Need is fundamental to justifying an emergency purchase. The procedure should not be allowed for satisfying preferences or convenience, for preventing funds from reverting at the end of a fiscal period, or for any reason that seeks to circumvent regular procurement methods.

Rules and regulations should cover delegation of authority by central purchasing to using agencies to make emergency purchases. Procedures should be established setting a limit, such as $1,000, below which a using agency may make an emergency purchase and report the circumstances promptly to central purchasing, and above which prior approval of central purchasing is required. The procedures should also call for written determination as to the need for an emergency purchase, setting forth the basis for selection of the supplier, and limiting the quantity to be purchased to that necessary to meet the emergency condition.

Rules or procedures should include a provision that to the extent time, the nature of the requirements, and other circumstances permit, competitive price quotations be sought from three or more potential sources. This is usually feasible or necessary by telephone, if no other method, in the process of ascertaining quickest available delivery.

Small Purchases

Procedures for making small purchases should always be prescribed by policy and rule. The purchasing statute or ordinance usually establishes a figure below which a purchase is considered a small purchase. Among the states, this amount ranges from $400 to $10,000. The median figure is approximately $2,500, with three states having no designated amount.

Statutes must protect requirements for competitive sealed bidding by prohibiting any artificial dividing of amounts or quantities to allow them to be made as small purchases.

Small purchase procedures should not require soliciting full competition. They should, however, preserve at all times the openness of the purchasing program, so any prospective bidder who requests to quote on a particular purchase is invited to do so. A general rule may state that competition be obtained consistent with the size of the purchase, but for small purchases it is more useful to prescribe that to the extent practical a minimum of three quotations, oral or written, be requested. For example, if there are only two suppliers of a particular item, both should usually be asked to quote regardless of the size of the purchase. The procedures should provide that the principles governing evaluation of quotations and award of contracts for small purchases follow those for competitive sealed bidding, and that public record be maintained of quotations, oral and written, and resultant awards.

Some jurisdictions rotate bidders lists for small purchases as a means of contacting a limited number of prospective suppliers and simultaneously distributing the opportunity to compete.

Accumulation of agency requisitions for similar items on a weekly or 10-day basis, when delivery is not critical, and the consolidation of quantities can attract more favorable prices and reduce administrative expense of handling quotations for small orders.

Geographic Purchases

Geographic purchases can be advantageous, or even necessary, for a number of reasons usually related to the high cost of transportation in terms of the cost of the product or to the need for local services. Examples of items already noted which lend themselves to or require

geographic buying are ready-mixed concrete, laundry services, sand and gravel, and pest control contracts. In addition, natural limits on the production capabilities of suppliers can make geographic or regional contracts more attractive to prospective bidders and to the purchaser. Thus, in large states few if any tire recappers might be able to bid advantageously on a contract covering the state's total area and requirements.

More than 60 percent of the states maintain bidders' lists by geographic areas or otherwise make purchases on an area basis. States small in physical size tend not to do so. In making geographic purchases, solicitations are essentially limited to firms located in the area involved and to firms which serve that area. Often the bidders' list maintained by central purchasing is supplemented on a particular requirement by local sources of supply suggested by the agency for whom the purchase is to be made.

Geographic and local purchases can be beneficial to small businesses, allowing them to compete when they could not do so on a statewide contract, and can be advantageous to using agencies on certain requirements where prompt, continuing services are needed. They should not be made, however, where a larger contract can satisfy requirements by more effective competition and at lower costs.

10. Acquisition: Bid Evaluation and Award

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Provide that awards under competitive sealed bids and competitive sealed proposals shall be made to the "responsible and responsive bidder or offeror whose bid or proposal is most economical for the purpose intended according to the criteria set forth in the solicitation."

Require that each solicitation set forth the factors to be considered in evaluating responses for award, and that no factor can be considered that is not included in the solicitation.

Require that the central purchasing authority publish rules and policies governing the evaluation-award process, including determination of responsibility and responsiveness of bidders.

Require rules that limit the use and number of multiple awards.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Establish policies and procedures for handling irregularities and mistakes in bids.

Define conditions and considerations under which awards may be made to more than one supplier for a similar or like item.

Establish policy regarding consideration of discounts for prompt payment.

Require documentation to support decisions involving award to other than the low price bidder, rejection of bids or acceptance of alternate bids.

Provide that during evaluation and until award, bid documents and related information are confined to jurisdiction personnel duly involved in the evaluation process.

Recommended Practices

All steps in the evaluation process should stress fairness and impartiality.

Seek to identify any characteristics of a product or service that can affect economy and utility for inclusion in future specifications and criteria for award.

On individual purchases, consult the using agency involved as part of the evaluation process.

Document the reason or basis for every award in a manner that is clear to a reader of the contract file.

The evaluation of bids and offers is a highly significant part of the purchasing process. It brings together the two principal aims of public contracting: economy and fairness.

The nature and importance of the evaluation procedure needs to be clearly understood by purchasers, bidders, agency program administrators, and the general public. The courts declare that the purpose of competitive bidding is the conservation of public funds, a finding that reasonably can be extended to say that the overall purpose of public contracting is to achieve economy. But the courts declare also that economy notwithstanding, favoritism, corruption, and fraud are not permissible in awarding public contracts, nor can decisions be arbitrary or capricious.

The evaluation of bids or offers for award of a contract, therefore, must be made equitably with economy as the objective. Otherwise, favoritism and waste result.

LEGAL CRITERIA FOR AWARD

Broad criteria for award should be designated in the purchasing statute or ordinance. Two of these criteria, responsiveness and responsibility, are overriding. Award cannot be made of a bid or offer that is not in keeping with the provisions of the solicitation, or to a bidder or offeror who lacks the ability to perform satisfactorily.

Other general criteria, appropriate for specifying in law, are price or cost, quality, suitability, delivery, and advantageousness. Language found most commonly among state purchasing statutes speaks of awarding contracts "to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." A number of states incorporate these factors into an overall requirement for award to the "best bid," and some, as in

proposed legislation to reform the federal purchasing act, call for award of the bid that is "most advantageous" to the government.

These several considerations can be consolidated into an inclusive provision recommended as purchasing law: *"Award shall be made to the responsive and responsible bidder or offeror whose bid or proposal is most economical for the purpose intended according to criteria designated in the solicitation."*

The statute or ordinance needs to supplement this provision with three requirements: (1) that the Invitation for Bids or Request for Proposals must set forth any factors other than initial price that will be used in evaluating the bids or proposals; (2) that no evaluation factor may be used that is not stated in the solicitation; (3) that if award is made for other than the low initial price, the reasons must be documented as a public record. In addition, to accommodate various needs for making partial awards, progressive or incremental awards, multiple awards, and awards by line items or groups of items, as well as other legal purposes, the statute should contain a provision to the effect that singular words mean also the plural and plural words the singular.

Finally, the purchasing law should ensure that a large award to a single bidder, including a jurisdiction's total requirements for a commodity or service, or award of requirements combined as cooperative purchasing, does not constitute discrimination or restraint of trade.

PURCHASING FACTORS FOR EVALUATION AND AWARD

Legal criteria establish basic policy. This policy must be implemented by purchasing criteria and specific evaluation factors.

After receipt and opening, bids and proposals must be examined for several considerations including responsiveness, competitiveness, suitability of the product or service offered, cost and economy for the taxpayer, collateral services that might be needed, ability of the bidder or offeror to perform, and so on. Specific evaluation factors can vary considerably according to the kind, nature, and intended use of products, including products that are predominantly similar, as with automotive tires of the same size where in one instance the chief consideration may be mileage, and in another, cornering at high speeds, or with typewriter ribbons, which for one purpose may be tested primarily for clarity and for another, length of service. Especially in the purchase of regular commercial products, suitability and economy usually are interrelated in terms of price and performance.

Responsiveness

Responsiveness and responsibility have particular legal connotations, and frequently are defined in statutes and ordinances. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and contractual terms and conditions. It relates also to fairness in that it requires the bidder or offeror to respond within certain bounds of commonality, or in terms of certain common denominators, to provide a foundation for competition. Absolute or precise conformity, however, is not required. The rule is that conformity in material respects—i.e., substantial compliance—suffices. This protects the public from being denied bona fide competition for reasons that are inconsequential. Other aspects of responsiveness, such as "all or none" bids and "substantial compliance," are discussed in Chapters 7 and 8.

Responsibility

Responsibility relates primarily to the ability of a bidder or offeror to successfully carry out a proposed contract. In addition, it can relate to one's character, reputation, and integrity. Thus, a bidder otherwise able to perform who has been convicted of antitrust violations may be found not responsible. Other considerations bearing on a determination of responsibility can be experience, past performance, business and financial capabilities, skills, technical organization, and reliability.

Some method of ascertaining responsibility, if only a simple assumption, is necessary in making any award. The alternative would be to make an award to a bidder or offeror who apparently or obviously would not be able to carry out the contract satisfactorily.

A policy of prequalifying bidders is a valuable aid, though it should not be a conclusive determination, in awarding contracts to responsible vendors. Criteria for prequalification tend to screen out nonresponsible firms, and the application file for bidder qualification affords a source of ready information for evaluation or follow-up. Law should provide that where the purchasing office makes an inquiry regarding responsibility and the bidder or offeror fails to furnish the information in an adequate or timely manner, a finding of nonresponsibility may be rendered. A determination of nonresponsibility should be made in writing as a public record when a bidder or offeror otherwise would have received an award.

Responsibility is discussed also under Chapter 7.

Price as the Primary Factor

Price is usually synonymous with an acquisition figure; i.e., the initial outlay of money necessary to buy something. Unfortunately, the proper role of price in determining the award of a contract often is not understood.

Lowest initial price does not necessarily equate with economy, or represent the most economical purchase. Where it does, and the bidder is responsive and responsible, it should determine the successful bidder. When it does not, award on the basis of initial price is imprudent or wasteful.

Initial price should always be a factor in evaluation for award, either as the basic determinant or as an element of overall cost. The correct role of price in the evaluation

process is related directly to the kind of specification used and the ability of the purchaser to identify and to designate in the solicitation other relevant factors that will be considered in the evaluation. Initial price is most likely to represent ultimate economy under two conditions: (1) when the specifications call for a product or service produced and delivered to the purchaser's precise design, as in the case of a construction item, or custom-tailored uniforms; (2) when the specifications are for an item that is standard to the extent that differences in quality and performance for the intended use are negligible, as with many building materials and inspection-graded foodstuffs. The *Report of the Commission on Government Procurement* explains that initial price is the proper determinant for award when the products or services offered, and to be furnished, are *essentially identical* irrespective of which bidder or offeror receives the award.

Historically, therefore, laws have required award on construction and public works contracts be made to the responsible and responsive bidder who submits the lowest price. Such bids are based on work that will be essentially identical, in accordance with the owner's specific plans. This is consistent with the precept that where specifications are written to result in bids on items that are not appreciably different in quality or performance for the intended use, initial price provides an objective means for achieving economy and for determining award among capable competitors. On the other hand, where bids are submitted on items that differ in quality or performance, further evaluation is needed.

Performance Factors: Price/Performance Evaluation

Equipment and supplies that are produced to the designs of the respective manufacturers are subject to differences in quality, in performance, and in suitability for different purposes. These differences often affect overall cost and economy, and where this is the case initial price is not an adequate criterion for award.

State and local governments customarily buy equipment and supplies in the form of commercial products designed by the sellers; rarely do they specify unique or custom-made items. In response to the question, "Do almost all of your purchases consist of commercially available items that also are sold to other customers and the public at large?" 49 states answered yes, and one stated that it often bought modified "off-the-shelf" items.

The long-standing practice of buying commercial products, which by nature differ in their performance characteristics, is recognized in many purchasing statutes and ordinances by provisions which call for the consideration of quality and suitability in addition to price in determining award under competitive sealed bidding. Where overall economy is understood as the objective, this has led in recent years to a concept of "performance purchasing," and where sufficient data can be assembled, to the development of award formulas based on "life-cycle costing." A similar idea that gained popularity in the 1960s was called "total cost bidding," and by 1967 some 200 state and local jurisdictions in the United States and Canada were using this approach in buying various types of construction equipment.

Competitive sealed bidding that provides for the evaluation of product differences is in sharp contrast to the traditional federal position that its formal advertising procedure is to obtain "minimum essential need at lowest initial price," and to rule out consideration of differences in the design and quality of products.

Performance purchasing implies the use of functional or performance specifications. This implication is correct, but the idea has a deeper base in philosophy and attitude. Primary is recognition that the substantive thrust of functional or performance specifications and performance evaluation factors is to achieve overall economy and utility. More value for the tax dollar is a long established aim of state and local professional purchasing associations.

Seeking optimum value often requires going beyond consideration of product similarities and minimum acceptability, to the point of identifying and analyzing differences which affect performance and cost. Under competitive sealed bidding, this is done on the basis of specifications and technical data submitted with the bid, without trade-offs or negotiation with the bidders. For example, in the purchase of electrical distribution transformers, bids usually are received on units of several well-established manufacturers that are used successfully in industrial applications and by electric power companies. The units are basically similar, meet typical specifications, and are acceptable. But performance purchasing would look farther than this, and in seeking to ascertain whether there are characteristics that could result in greater economy would find the units differ in efficiency of operation. This factor then can be included as one of the evaluation criteria in the Invitation for Bids, the efficiency of each brand can be determined from technical data required to be submitted as a part of the bid, and a more accurate comparison and overall assessment including acquisition price can be made to arrive at the most economical purchase. In developing and applying price/performance evaluations, central purchasing should use outside expert knowledge as may be needed to make proper technical determinations.

The same principle and approach can apply whether buying ballpoint pens, where comparative length of writing should be a major evaluation factor, to bulldozers, where differences in costs of operation, maintenance, and downtime are significant considerations. The method can be used effectively in other ways and in varying degrees. In the case of a Qualified Products List (QPL) specification, one state uses a combination of design and performance factors to establish a level of acceptability for paint brushes. The brushes of different manufacturers vary in construction and other characteristics, and point values can be assigned to these

different factors to obtain comparative overall ratings. If the score for acceptability is 60, and the maximum possible score is 100, bids are solicited on all brands with a score between 60 and 100. The bids submitted are evaluated by equating point ratings to the bid prices to arrive at a performance/price relationship for each brand offered, from which comparative optimum values can be determined for different items and uses, and the contract awarded accordingly.

Performance purchasing, therefore, not only seeks greater economy and better value, it has the distinct virtue of providing incentive for manufacturers and bidders to improve quality and service. To the extent either or both of these are factors in the evaluation process, a bidder can enhance his competitive position by improving his product, or by lowering his price, or by a combination of the two. This contrasts with incentive for bidders to reduce quality to the lowest acceptable level under the "minimum acceptablility low price" philosophy of evaluation and award.

Life Cycle Costing

Life cycle costing (LCC) gained much attention through the 1970s. It is a method for considering bids and offers which uses price/performance evaluations to their fullest extent. Unfortunately, true life cycle costing usually requires a series of factors and figures to be used as cost elements, sufficient to construct a total cost formula, that rarely is available. As a result, many purchases are made under an LCC misnomer, represented as life cycle costing when in fact they are not. While projections, if logically arrived at, are permissible under LCC, the purchasing office should be aware of legal implications of a deficient life cycle costing formula when assumptions or approximations are used as reliable figures. The overall purpose and intent of LCC applications are to be encouraged, however, even while a more accurate understanding of the term is needed generally.

Classic examples of life cycle costing can be found in formulas developed for the evaluation of bids on window air conditioners and water heaters. Where these are used, low initial price may not represent the best bid, as often is the case when price/performance criteria are applied.

Evaluation for Energy Efficiency.

Increased costs of energy in all forms and the need for energy conservation have spurred efforts to purchase products that reduce costs by operating more energy-efficiently. In public contracting, this necessitates the use of price/performance evaluations. The values can be applied readily to vehicles, electric and gas operated appliances, and many kinds of industrial equipment, including air compressors and fork lift trucks. The air conditioner and water heater examples already cited are well-known applications. It should be emphasized that a life cycle costing formula is not necessary for energy-efficiency purchases. Award can be determined by an evaluation consisting only of acquisition price plus the cost of energy consumed over a projected period of use, calculated for each competing product.

In addition to reducing costs for the professional purchaser, these evaluations have long-range benefits in stimulating manufacturers to design and market improved products which afford greater economy and utility for the retail buyer.

Evaluation for Other Advantages

Price/performance evaluations can provide for economic consideration of any desired characteristic of a product. An example is the successful effort spearheaded by the National Institute of Governmental Purchasing directed to the purchase of products with lower noise levels. The "Buy Quiet" program is a cooperative endeavor on the part of local, state, and federal groups to buy quiet models of various kinds of equipment, such as grass mowers, trucks, pneumatic drills, chain saws, trash compactors, and typewriters. Evaluation factors and procedures applicable to the different types of equipment are developed for use by public purchasing. The result is a quieter environment, and again, the method of determining award provides that a manufacturer enhances his competitive chances by improving, not reducing, product performance.

Timeliness of Evaluation

It is incumbent upon the central purchasing process to evaluate bids and offers and make awards expeditiously. Unnecessary delays discourage competition and adversely affect the programs of using agencies. Price/performance evaluations usually require more effort and time than ascertaining the low initial price bidder, but the difference need not be significant. The process becomes simpler and more routine with experience.

Specifications and Performance Evaluation

Performance, or functional, specifications are discussed in Chapter 6, with emphasis on the change from traditional specification that spells out how something is to be made, or done, to designating what it must do. This shift in focus invites competition not only on similarities and equivalences but also on differences and superiorities. The evaluation of differences is the key to overall cost-effectiveness.

There is a close relationship between the type of specification used for a purchase and the factors evaluating competitive responses for award. The performance purchasing approach combines performance specification factors and price/performance criteria into evaluations, under competitive sealed bidding or competitive negotiation, to achieve greater utility and economy. Minimum acceptability and initial price are components in the evaluation process, but they are relative to overall considerations. The approach has sound precedent and room for substantial growth. For many years coal, mined and sold by the ton, has been bought by large users not according to price per ton but

on the basis of cost per million BTUs. This results-oriented view is now being applied to buying air conditioners in terms of BTU cost, water coolers and water heaters on the basis of cost per gallon of cooled or heated water, vehicle tires on the basis of cost per mile, copying machines on the basis of cost per copy, and so on. The technique can expand in many directions: to buying light bulbs and tubes in terms of cost of watt/lumen hours; cleaners in terms of cleanability; outdoor flags according to durability; cocoa mats according to wearability; vehicle batteries on the basis of cost per start; and filing equipment by cost per record or filing inch.

Evaluation of Discounts

When not calculated by bidders into their net bid prices, discounts are usually offered as percentages in any of three forms: a percentage to be deducted from an established price list; a percentage to be deducted for prompt payment of an invoice; a percentage to be earned after having reached a certain volume of ordering. The first two are common practices; the third is unusual.

A discount from a published price is referred to as a "trade discount" and is frequently requested in the Invitation for Bids as the mechanism for pricing the resulting contract. The published prices from which the discount is to apply may be a retail price list, a wholesalers' or jobbers' price schedule, or a government price schedule. If the discount to be offered is in a chain form, such as 50-10-5 percent, the IFB should instruct the bidder to state it as a single figure, 55.25 percent. Except in cases where the discounts offered by bidders are offered against the same price schedule, or against schedules which carry identical prices (e.g., window glass or galvanized washers), award should never be based on the size of the discount alone. Low bidders should be determined by comparison of net prices after discounts are applied. This rule is observed by almost all state purchasing programs, with over 90 percent of them reporting they rarely or never award contracts on the basis of discount without consideration of net price.

A discount offered for prompt payment is often called a "cash" discount, is usually 1 percent or 2 percent, and typically calls for payment within 10 to 20 days. Many jurisdictions do not consider these discounts in comparing or computing bid prices. Others do not process invoices rapidly enough to be entitled to cash discounts, which, therefore, should not be used in deciding the successful bidder unless steps are taken to assure that the invoices will be paid within the time allowed for the discount.

The following language as a part of the Invitation for Bids can be useful with respect to cash discounts: "Bidders are urged to compute discounts for prompt payment into the bid price(s), with terms of payment to be Net, 30 days. Such bids may receive preference. If a cash discount is offered and accepted, it will be considered earned if paid within 30 days after receipt of correct invoice or acceptance of goods, whichever is later."

A discount to be earned by ordering a certain quantity or dollar volume under an indefinite quantity contract is seldom called for in an Invitation for Bids. The purchaser intends that the nature and provisions of a proposed contract elicit the most favorable prices bidders can offer without the addition of qualifying conditions. Occasionally, however, a bidder proffers such a discount gratuitously, usually in a graduated range such as 4 to 8 percent applicable to orders placed against the contract after purchases have reached, say, $100,000. Such propositions do not lend themselves to equitable competitive evaluation and should not be used to determine a low or successful bidder. If award is otherwise made to a firm that has included an offer of this kind, however, the purchaser should take such advantage of it as circumstances subsequently allow.

MULTIPLE SOURCE EVALUATIONS

There are conditions under which it is either necessary or advantageous to award a contract to more than one supplier for the same item on a solicitation, or for similar items. In the case of definite quantity contracts, this is called a progressive, or incremental, award. For indefinite quantity contracts, it is referred to as a multiple award.

A progressive award is in order when two or more suppliers are necessary to furnish the quantity specified in the solicitation or to meet the delivery requirements. If either circumstance can be anticipated before seeking competition, the solicitation document should be designed to provide for separate-item bids on less than the full quantity or the total delivery. Evaluation and award should be made by accepting prices and deliveries beginning with the most economical and progressing to higher offers until the full requirements are committed at the lowest overall cost available.

A multiple award is the award of a contract to two or more suppliers for furnishing an indefinite quantity of a like item or category of items, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service or product compatibility. An example of a multiple award in state purchasing would be award of an annual statewide term contract to the two lowest and best bidders for furnishing ready-mixed paints, because a single supplier could not adequately provide the necessary day-to-day deliveries and technical services to a large number of widely dispersed using agencies and locations.

It is important to understand that making multiple awards can evade central purchasing responsibilities for making buying decisions between and among products and vendors. Multiple awards transfer these decisions in large part or in whole to the program agencies, where they are likely to be made with less impartiality and purchasing proficiency. Written policy and rules are necessary to guard against laxness and abuses in connec-

tion with multiple awards. *The policy and rules should provide: that although the occasional need for multiple award is recognized, extreme care must be exercised to protect the character and principles of competitive bidding, and that multiple awards shall not be made when a single award can serve the contract requirements, that the number of suppliers included under a multiple award shall be limited to the minimum number necessary to reasonably satisfy the needs of the contract and that such awards shall not be made for the purpose of dividing the business, providing a selection of products or suppliers to satisfy using agency preferences as contrasted with needs, or avoiding the resolution of the bids.* The policy and rules should also require: (a) that any multiple awards be made under the competitive sealed bidding procedure, but if competitive bidding is not practicable, competitive quotations or competitive negotiation must be used; and (b) that all eligible users of the contract be named in the solicitation with the understanding it is mandatory that their needs will be obtained from the successful bidders under the terms and conditions of the contract.

State purchasing programs on the whole make relatively little use of multiple awards. There is usually no clear authorization in statute or rules and regulations for such awards, and they generally result in higher prices than bids submitted under either definite quantity or single award indefinite quantity contracts unless astute efforts are made to promote competitiveness. State and local governments are finding that better identification of agency needs and usage of an item resolves a problem which frequently causes using agencies to favor multiple awards under term contracts. Where there is a demonstrated need for different capabilities and levels of performance, e.g., as in copying machines, these can be specified as separate items on the Invitation for Bids. Each item can then be awarded to a single supplier in a manner to provide using agencies an appropriate range of selectivity to meet different needs and applications.

By formal resolution, the National Association of State Purchasing Officials has expressed its support of the principle of utilizing multiple award type contracts only when a single award will not suffice.

OTHER CONSIDERATIONS IN EVALUATION

After opening, many central purchasing departments refer bids to the using agency for which the purchase is being made for its review and recommendations. Any such recommendations are not binding, but can assist central purchasing in making the correct award. There are known instances, however, where bidders have participated in the evaluation process, to the extent of preparing or otherwise substantially influencing recommendations for award. Any and all such involvement should be prohibited, and the most effective safeguards are: (1) a provision in the purchasing statute that bids shall be publicly opened and a tabulation or similar record made publicly available at that time, with the bids themselves open to public inspection *only after award,* (2) an implementing rule or regulation to the effect that during the period of evaluation, possession of bids and accompanying information is limited to personnel of the central purchasing office and the using agency who are responsible for participating in the evaluation, and vendor participation in, or furnishing information to vendors on the status of the bid evaluation, is not permitted.

Any listing of questions, problems, obstacles, difficulties, contentions and other considerations that are encountered in the evaluation and award of bids and offers would be incomplete. A mark of professional purchasing is the ability and presence of mind to foresee many of these, then to eliminate or reduce their impact by skillful design and preparation of the solicitation document.

Additional coverage or discussion of circumstances that affect evaluation can be found in the following chapters:

"All or None" Bids..... Chapter 7
Alternate Bids..... Chapter 7
Confidentiality of Information..... Chapter 7
Late Bids..... Chapter 8
Mistakes in Bids..... Chapter 8
One or No Bids Received..... Chapter 7
Optional Items..... Chapter 6
Public Disclosure of Bids..... Chapter 8
Rejection of Bids..... Chapter 7
Resident Preferences..... Chapter 8
Substantial Compliance..... Chapter 8
Telephone and Telegraph Bids..... Chapter 8

DOCUMENTATION

The importance of adequate documentation of the reasons for determining the successful bidder can scarcely be overstated. The evaluation process by nature is inclined to unexplained assumptions by purchasers and misunderstandings on the part of bidders and the public. Protests on matters ranging from determinations of responsiveness and responsibility to methods of testing products to the application of evaluation factors should be anticipated. Reasonable documentation, if only a brief notation, concerning any action likely to need explanation is the best defense.

After award, the bid file should contain a record sufficient for a reader to follow the course of the transaction, especially as to the method of evaluation and basis of award. The latter can range from a simple indication that award was made to the low price bidder to a listing of the completed life cycle cost calculations made of all bids received. In preparing documentation, the purchasing officer should be aware of yet another of the laws of contrariety: if something can be misinterpreted, it likely will be.

11. Quality Assurance: Inspecting and Testing

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Require that central purchasing establish and administer a formal inspection and testing program.
Authorize the state or local government to inspect the plant of a contractor or prospective contractor.
Provide that central purchasing may use laboratories and testing facilities of any other department, institution, or agency of the jurisdiction, and may contract for testing services with outside sources.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Designate actions that may be taken when contractors fail to perform satisfactorily.
Provide that central purchasing may prescribe procedures for the testing or trial by a using agency of any equipment, materials, or supplies.
Establish standards for the conduct of inspections in the plant or place of business of a contractor or prospective contractor.
Develop criteria for the format and substance of complaint files, including a formal, written reporting system for deficiencies noted during inspections.

Recommended Practices

Central purchasing should prepare and publish an inspection manual which sets forth the authorities, responsibilities, techniques, and standards related to the inspection and testing program. Alternatively, this material can be included in the purchasing procedures manual.
Government personnel who are responsible for receiving and inspecting items should have ready access to the applicable specifications prior to delivery.
Central purchasing should give prior approval, with instructions or provisions for monitoring, to any trial or testing of products by using agencies.
Central purchasing should write guidelines on the types of testing facilities that are available and on the use of other quality assurance techniques, such as obtaining certificates of compliance or certified test results to accompany deliveries.
There is a need to explore ways in which several or many jurisdictions can coordinate the testing of similar items and exchange test information.
There should be a formal, written, reporting system for complaints against vendors and for deficiencies noted during inspections.
Central purchasing should be repsonsible for acting on deficiency and complaint reports and should be the contact with suppliers regarding such deficiencies.
There should be written policy dealing with product warranties and the handling of latent defects.
Inspection reports should be tied to payment procedures so that payments can be withheld until any problems are resolved satisfactorily.

This chapter is concerned with the inspection, testing, and acceptance of equipment, materials, supplies, and related services, but not of construction.

Inspection of construction work involves unique activities to the extent of necessitating employment of licensed professionals either on staff or by contract. It demands compliance with building codes and similar legal mandates as well as, or in addition to, compliance with the purchaser's specifications. Inspection, tests, and acceptance testing of construction and public works projects, therefore, warrant special attention and treatment apart from commodities and services.

The chapter also does not address the administration of contract professional services, although requirements for contract performance are as critical for these procurements as is the inspection and testing of equipment, materials, and supplies. Monitoring the performance of professional services is referred to in Chapter 8.

A notable deficiency in many public purchasing systems is the absence or inadequacy of a centrally administered inspection program. This condition exists even in purchasing programs that are quite innovative in other respects (e.g., in automation of data or in advanced specification writing). There is often a feeling that

a formal inspection program is not necessary, with three explanations usually given for this view. One is that, as a general rule, suppliers neither purposefully nor frequently make nonconforming deliveries, so the few instances that do occur do not justify the effort needed to detect them. Second, that using agencies do an adequate job on their own to ensure that deliveries comply with specifications. Third, that deliveries are satisfactory and conform to specifications; otherwise central purchasing would receive many complaints.

A closer look, however, indicates this view lacks validity. State and local governments with centrally controlled inspection programs invariably have uncovered large numbers of nonconforming deliveries at the inception of the programs; for example, three-gallon containers furnished in lieu of five-gallon containers specified, improper components in equipment, diluted chemical compounds, instrumentation not properly calibrated, and equipment being dropped off when the contract calls for installation. The incidence of nonconformance is substantial enough to disprove a sweeping assumption that suppliers can be expected to comply with specifications.

Experience shows also that while some using agencies take great care in inspecting delivered goods, the majority tend to accept the premise that items delivered will conform to the specifications. This occurs most frequently where central oversight is lacking. Even when receiving personnel attempt to inspect deliveries, all they can reasonably do is make a visual examination for damage if they have no guidelines to follow and no copy of the applicable purchase specifications. Without a formal program, there appears to be little assurance that inspections are made at all, or if made, that they are thorough. Furthermore, a system that lacks formality and direction is susceptible to collusion between the shipper and receiver.

A lack of complaints from using agencies should not be construed as an indication that a formal program is not needed. Many types of nonconforming deliveries can be discovered only by proper inspection. If a receiving clerk routinely signs a delivery ticket for 20 five-gallon containers of an item when actually 20 three-gallon containers were received, payment likely will be made for five-gallon units and the ultimate user may never realize an incorrect quantity was delivered. Where quality is reduced even slightly, the savings to a supplier can be substantial, and the change may never be apparent to the user. A nonconforming item may cause a problem only infrequently, as when it is operating under stress (e.g., a trash bag thinner than specified). Similarly, a minor change in the performance of an item may not be readily noticeable (e.g., diluted floor wax). A problem that occurs after a lapse of time following receipt of an item may not be attributed to original inferior quality. Absence of complaints, therefore, can signify poor or nonexistent inspections. Some using agencies indicate they do not send file complaints to central purchasing because effective action is not taken on them. Although this generally is not the case, such an attitude further supports the need for an effective central control to include not only receiving complaints but acting on them and providing feedback to the using agencies.

Governments without central inspection programs fail to heed a basic rule of the marketplace: "let the buyer beware." This caveat came about not only because of inadvertent mistakes but because of unscrupulous suppliers who will use system weaknesses to their advantage. Where inspection is inadequate, opportunities for fraud on the part of an unprincipled supplier are obvious. He can offer one thing and ship another, or he can compute his bid on an item of lower quality than that specified, underbid his competitors, and probably receive the award if there is no indication he is not a responsible bidder. Government jurisdictions which have instituted central inspection programs have found these practices occurred often, with the number of nonconforming deliveries discovered when the inspection program was undertaken decreasing sharply and remaining at a low level once the program became fully operational.

Experience also argues that in order for a government to be wary in the marketplace, the task must be recognized as a specialized responsibility. When the inspection process is centrally managed and controlled, with uniform rules and procedures, many problems can be overcome. Precautions can be taken to ensure that deliveries are in fact inspected, with receiving personnel given guidelines and information necessary to make inspections competently. A formal system should evidence continuing concern for assuring the correctness of goods received, and using agencies will be encouraged to submit complaints. Requiring proper receiving records and periodic checks by central inspection personnel, auditors, or other government authorities will reduce the possibility of collusion between suppliers and receiving personnel. The checks and controls of a formal system can form a built-in means of disciplining careless suppliers and thwarting those who attempt to defraud the public.

PLACEMENT IN CENTRAL PURCHASING

Authority over a central inspection program logically falls within central purchasing, and this appears to be implicit in most purchasing statutes. The requirements for open competition, properly drawn specifications, and the various safeguards connected with the central purchasing program are meant to ensure that tax dollars are spent honestly and prudently. The public purchasing system which has the duty to see that awards are made to suppliers who are capable of providing the items specified is incomplete if it does not take measures to see that the items delivered conform to the purchase specifications. Therefore, the central purchasing office should exercise an overall authority for determining that items contracted for comply with applicable specifica-

tions and requirements. This authority should include: responsibility for establishing testing facilities; for using those already available in the government, and obtaining test and inspection from outside sources where deemed advantageous; and for delegating various aspects of the function to using agencies. *If there is silence or ambiguity in the purchasing statute or ordinance as to whether central purchasing has this authority, specific authorization should be added to the statute.*

Reinforcing the need for central supervision of inspection and testing is the principle that the chief purchasing official is, or should be, the contract administrator. This duty invests in the office a direct interest to see that inspections are performed promptly and well. If there is an unreasonable amount of time between delivery and inspection, the delay may have nullified the government's right to demand that unsatisfactory performance be corrected. Not making an inspection promptly also may cause difficulties in establishing a successful claim against a supplier when problems are finally detected. For example, if an item is already in use when an inspection is made, and the item is found to be damaged, it may not be possible to prove the damage did not occur during use. Items placed in inventory frequently are intermixed with other items, making it impossible to identify which supplier furnished the faulty items. To carry out contract administration responsibilities, the purchasing official must make certain that inspections are timely and in accordance with established policies and procedures.

TRIAL AND TESTING OF PRODUCTS

There is one aspect of testing that can be the source of many purchasing problems and disputes with vendors but it is rarely addressed in rules or written procedures. This has to do with uncontrolled or indiscriminate trial and testing of products by using agencies. Frequently, it is brought about as a sales strategem initiated by a would-be supplier. Even when an agency is earnestly seeking something to meet a need, however, seldom is the trial or testing conducted in a manner that properly takes potentially competitive products into account. The result tends to be a biased appraisal, to promote resistance to competition on the part of the using personnel, and to cause vendors or prospective vendors to be misled.

Policy in this area should stipulate that central purchasing prescribe procedures covering the trial use or testing of products by using agencies, including the use of any results therefrom in the preparation of specifications or invitations for bids or proposals. Central purchasing should define the scope of the trial, the testing procedures, and the report format. Where indicated and feasible, the purchasing office should make on-site observations of the test.

PLACE OF INSPECTION

While the inspection of most purchased goods takes place at the point of delivery, which is usually the using agency, there are occasions when it is made at the manufacturer's plant or at some other location which either the purchaser or seller may designate. A pilot model of a chassis for a school bus may be inspected at the site of manufacture prior to authorization to proceed with production; tire recapping may be inspected at the recapper's shop; a gantry crane may be inspected in various stages of construction at the assembly yard; and so on. Many states require the test driving of police vehicles over obstacle courses prior to award of a contract.

Also, there are occasions which call for inspection of a bidder's production and quality control facilities to ascertain capability to perform satisfactorily if awarded a pending or future contract.

The need for conducting such inspections and tests calls for statutory authorization to inspect plants and products, before, during and after manufacture, together with adequate rules and procedures governing the manner, locations, and times in which these types of inspections may be made.

INSPECTION MANUAL

An excellent means of making certain that adequate inspections will be conducted is to set forth procedures, techniques, and standards in a separate inspection manual, or as part of the purchasing procedures manual. These instructions should specify authorities, responsibilities and inspection methods. At present, relatively few state and local governments have inspection manuals and most state programs devote only a few sentences to inspection in their purchasing manuals.

Because basic requirements of good inspection often are neglected, the manuals should cover even obvious procedures, such as checking for late deliveries, damaged goods, and discrepancies that can be detected with the five senses. The manuals also should discuss inspection techniques that are most practical and useful, equipment that should be used, facilities available for tests that cannot be performed at the using agency location, and procedures to be followed when nonconforming deliveries are detected. Receiving personnel should have ready access to the specifications of items they inspect.

Receiving documents usually show the quantities to be delivered so that receiving personnel can check the deliveries against these quantities. Another method of checking is to exclude the quantities from receiving documents and require receiving personnel to count the items and record their tallies on the receiving report. An independent party then compares the quantity delivered with the quantity ordered prior to payment for the goods.

Warranties

The warranty is an aspect of quality assurance that customarily is given too little attention. Purchasers are inclined to call for or accept "the manufacturer's standard warranty" without examining its conditions and provisions. Warranties on similar products can vary substantially from different manufacturers and should be treated as a competitive element in the evaluation of bids and offers unless the purchase description establishes a uniform warranty.

Warranties are intended to protect the purchaser against poor workmanship and defects. They can be implied or expressly written. The Uniform Commercial Code provides that a product carry an implied warranty to the effect it will be useful for the purpose suggested by the seller. Alone, this affords minimum, and meager, protection, especially for the professional buyer. It is, therefore, frequently supplemented by manufacturers' written guarantees, which need scrutiny and comparison. Central purchasing should have a policy covering the analysis and treatment of warranties, including the handling of latent defects.

STAFFING AND TESTING FACILITIES

More than one half of the states and some local governments have, as a part of the central purchasing program, at some inspection capability for assisting or supplementing inspection of products delivered to using agencies. As a practical matter, all central activities delegate some inspection to using agencies. The more effective programs employ adequate central purchasing personnel who perform inspections of specialized items and major purchases, and who also make spot checks. In addition, central purchasing can conduct periodic training classes as a means of improving the quality of inspections. The classes should include simulated practical situations and problems, proven procedures for handling them, and new and improved inspection techniques.

Some inspections and tests can be performed only with special equipment or by technical laboratories. At present, approximately 70 percent of the states have testing resources which can be used for checking on the compliance of products received as well as in the work of developing specifications, testing items for which approved products lists are being developed, and evaluating samples.

The need for tests and testing occurs for various reasons and at different times throughout the procurement cycle. Products bought on the basis of qualified products lists, as may apply to such items as video tapes and carpets, go through certain tests prior to issuance of the Invitation for Bids. Tests can be used in many other ways in the development of specifications or purchase decriptions before competitive solicitations are prepared. After bids are opened, tests may be made of bidders' samples to determine whether specifications are met, or to evaluate the comparative performance capabilities of competing products. Thus, one state, in testing the writing length of bid samples of ball point pens, has found substantial differences between various brands with results ranging from 3,000 to 12,000 feet of written line. Following the award of a contract, tests may need to be conducted on a pilot model or prototype, or in other instances, may be called for during production as a measure of quality control. Upon delivery, testing may be necessary to ascertain compliance with specifications. Finally, tests conducted after an item has been placed in service can be helpful in solving problems associated with complaints by using agencies about the product or its performance.

An effective testing program does not require that central purchasing have in-house or stand-alone testing facilities. Combinations of alternatives can be cost effective in light of the variety and increasing technical complexity of test requirements. Successful programs have been built around cooperative arrangements between purchasing and other agencies in the government which already staff and maintain testing capabilities, such as colleges and universities and departments of agriculture and transportation. For some food items, the services of the U.S. Department of Agriculture are available through agents who grade products at the processing site to ensure they meet certain standards. Bidders can be required to submit samples of randomly chosen items off the shelf or off the assembly line and have them tested by various national organizations in order for their bids to be considered. In other cases, suppliers can be required to submit certificates of compliance or certified test results with each shipment. Private laboratories can often be employed advantageously, particularly in specialized areas such as the testing of coal.

Since most governments buy many items that are the same or functionally similar, coordinated testing programs can be feasible. By combining resources in a joint effort, many governmental units that cannot afford testing facilities on their own can participate in a joint testing program. *On a broader scope, nationwide programs for collecting and disseminating test data would not only assist smaller governments but also eliminate much duplication where numerous governments perform the same or similar tests individually.* In addition to reducing duplication of effort and expense, more uniform standards could be developed, as discussed in Chapter 6 "Specifications," and more testing procedures could be adopted. With this kind of coordination, it might later be possible to designate on-site inspectors at manufacturers' facilities to make sure that shipments to client governments meet prescribed requirements.

ORGANIZATION

Since inspection and testing are so closely allied with specifications and standards activities, the work can be carried out effectually in conjunction with those functions. The position is sometimes taken that it is

preferable to maintain testing and inspection operationally separate from both the purchasing agents and standards staffs, to provide a check in the system and guard against favoritism toward a particular item or supplier. This degree of severance is not necessary, however, and in practical terms could apply only where the inspection and testing activities require a complement of personnel sufficiently large to justify a separate administrative unit.

Although there must be formality in the process, the inspection staff should have latitude in scheduling spot inspections to cover the spectrum of items received and the using agencies served. Copies of award documents should be sent to the inspection staff so they can plan their work efficiently. Management should ensure that inspections are conducted in accordance with established policies. The inspection staff should seek to respond to complaints from using agencies by inspecting items upon request. Other areas of coverage will become apparent to the inspection staff on its own and through communications with purchasing agents. Items that affect the safety of citizens and wards of the government, items that have caused problems in the past, items for which future problems might be anticipated, and new products should b given particular attention.

Timeliness

Organization and procedure should encourage promptness in the inspection and acceptance of merchandise and the processing of receiving reports. This requires planned coordination between inspectors, the purchasing office, and the accounts payable or disbursing function. Unnecessary paperwork and red tape should be eliminated. The timely payment of invoices improves both competition and cooperation on the part of vendors, especially during periods of high interest rates. Specific procedures should be developed to expedite inspection and the processing of invoices when a discount can be earned for early payment.

INSPECTION AND COMPLAINT RECORDS

Instances of nonconformance with specifications, noncompliance with contractual terms and conditions, or other types of complaints concerning suppliers' performance should be recorded and referred to central purchasing. Most states and many local governments use a special document or a "Complaint to Vendor" form for this purpose; some use a detailed "Product Information Report." A file of complaint forms and information on the action taken can serve as a vital record in assisting purchasing agents to deal effectively with poor performance on the part of suppliers. In addition, complaint records can be used as criteria for deleting suppliers from the bidders list and in deciding which of two equal low bidders should receive an award.

Records of complaints, actions taken, and final resolutions should be filed and be accessible to all who need to review them. In some present systems, purchasing agents keep individual complaint files on the suppliers on their bidders' lists. This procedure reduces accessibility and the usefulness of information concerning suppliers who sell several products that are handled by different purchasing agents. If not maintained on a computer, complaint files should be arranged and indexed so that all complaints about a particular supplier can be quickly collected. Where complaint records are kept with other vendor records rather than centrally filed, the complaint information should be identifiable for easy retrieval. A simple method of doing this is to put complaint records in colored folders that contrast with those used for other records. Since complaint files are public records and possible evidence in litigation, care must be taken to prescribe by rule or regulation the form and substance of these records.

The management information system should seek to incorporate vendor performance with other computerized vendor data.

An effective reporting procedure provides for periodic reviews and checkpoints for action. Guidelines should be established indicating that when a certain number of complaints about a supplier have been received within a certain period of time, the supplier's record should be reviewed for appropriate action. Actions taken could include visiting the supplier to discuss his performance, writing letters that caution him against continued poor performance, and informing him of criteria for removing him from the bidders list. Factors such as the number of complaints, the seriousness of the complaints, and the supplier's cooperation in rectifying situations that produce legitimate complaints are considered in deciding the severity of action needed. The guidelines should be directed to individual commodities, since suppliers may perform well as to one commodity and unacceptably on another.

Complaints signal poor performance which, if sufficiently serious, should be the basis for witholding payment to the supplier. Inspection and complaint procedures should provide that in such cases copies of the reports be sent to the finance department to stop payment until the problems have been corrected. Some purchasing programs do not permit payment on deliveries of designated types of items (e.g., certain kinds of installed equipment or items exceeding a specified dollar amount) until they have been inspected and a written acceptance report has been filed.

COMMUNICATION WITH SUPPLIERS

Inspection procedures should cover the manner in which complaints or unsatisfactory deliveries will be resolved. In some systems, the inspector contacts the supplier to arrange a remedy for the deficiency. The inspector makes arrangements that he feels are appropriate

to the circumstances. In other purchasing systems, inspectors report the situation to the purchasing agent, who then initiates action with the supplier. Both methods seem to function very well in some cases and moderately well in others, but in either case nonconformance with specifications, poor performance, and other vendor complaints require prompt decisions that correct the problem. These decisions should be the direct responsibility of central purchasing. It may be necessary to revise a delivery schedule, cancel a contract, or initiate a new purchase action. A written warning to the supplier or even removal from the bidders list may be in order, and such actions are properly the province of the central authority.

Purchasing is responsible for admitting firms to the bidders lists and therefore must be aware of complaints as first-hand information regarding the willingness of suppliers to cooperate when difficulties arise. This is also part of purchasing's contract administration responsibilities. For the benefit of suppliers, there should be a single agency authorized to take official action with respect to any aspect of a purchase. When suppliers are forced to look to different agencies for answers to various questions involved in a transaction, the process becomes frustrating and time-consuming, especially where complaints are involved.

As previously indicated, some systems provide that the inspector advise the supplier of deficiencies and agree with him on a specified number of days to perform according to the contract. If this is accomplished, an information report is sent to purchasing. If further action is necessary, the purchasing agent contacts the supplier. This approach keeps purchasing in the mainstream, and after facilitates a prompt solution.

Inspection is a necessary protection against a vendor's ability to evade the purposes of competitive bidding by delivering inferior goods. The integrity of the purchasing process demands that goods and services be furnished as specified or, where this is not done that measures be taken to satisfy the contract. Among measures available are requiring the supplier to make any necessary correction or to replace the item, in either case at no cost to the purchaser. If he is unable to do either of these, the purchaser should have a contractual provision to resolicit or to purchase the items on the open market and charge the defaulting contractor with any excess costs occasioned thereby, including all costs incidental to the repurchase. There also may be liquidated damages which can be invoked or specific damages which can be claimed. Where the contractor is a chronic or serious violator, suspension may be in order or debarment as a future supplier may be the appropriate remedy.

12. Safeguards

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Provide public access to the procurement process by requiring the publication of all purchasing laws, rules, regulations and procedures; the public notice of solicitations of bids and proposals; the documentation of specific actions in the procurement process; public bid openings; and public access to other records except unopened bids, documents upon which an award is pending, and trade secrets, test data, or similar proprietary information.

Provide criminal penalties for attempting to influence awards through offers of something of value and for accepting such offers; provide that all guilty parties be financially liable to the government for any losses that the government incurred as a result of any award which was so influenced.

Provide that where contracts are declared void by reason of a conflict of interest, the public employee involved will be liable to the government both for the amount of any monetary gain realized and any loss that the government suffered as a result of the contract.

Set forth the conditions under which the government may be liable for a contractor's provable costs under a contract which results from a conflict of interest.

Require a bond to protect the government against losses caused by malfeasance or misfeasance of government officers or employees who can influence the award of public contracts, if no provision is made for such a bond elsewhere in law.

Require that a code of ethics or standard of conduct be published governing the performance of government employees and non-employees associated with government contracts, and provide for criminal, civil, and administrative sanctions, penalties, and disciplinary actions for violation of such standards as applicable to government employees or to non-government entities and personnel.

Establish personal liability for government personnel who authorize or make purchases in violation of applicable statutes, rules, or regulations.

Authorize purchasing to require the submission of cost and pricing data where competition is inadequate or unavailable, and authorize the audit of books and records pertaining to cost and pricing data and to the performance of a contract where price is not firm.

Require a procedure, under implementing rules and regulations, for resolving protests and complaints and breach of contract, and authorize central purchasing to resolve such disputes.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Require immediate dismissal of government employees convicted of a conflict of interest violation.

Require central purchasing to maintain surveillance of "back-door selling," and to prescribe measures to counter its effect.

Establish rules governing payments from imprest or petty cash funds.

Set forth written policy covering association and relationships of government employees and vendors or potential vendors.

Prohibit purchases being made for or on behalf of government employees.

Recommended Practices

The central purchasing authority should prepare written procedures designed to detect and prevent the circumvention of purchasing laws and rules.

Central purchasing should have written guidelines for the use of cost and pricing analysis.

Central purchasing should have a system for evaluating vendor performance to protect the public against unreliable suppliers.

The central purchasing authority should establish a program for continuing communication and coordination with the appropriate law enforcement units who are responsible for dealing with organized crime matters.

Public purchasing and contracting demands a variety of safeguards. A variety is necessary because in addition to the public interest, which is paramount, purchasing serves the interests of numerous government agencies with responsibility for diverse programs, of bidders and those who might wish to bid, of successful bidders and contractors, and of others who are directly and indirectly involved in the conduct of government business.

Structures and procedures in the purchasing process are established not only for effectiveness, but also to

guard against improper actions by government personnel and by suppliers. Centralization, for example, transfers purchasing authority from using agencies which may have parochial interests to an office which must abide by professional impartiality. Requirements for competitive bidding, solicitation of qualifed suppliers, and award to the best advantage of the taxpayer are intended to prevent awards based on arbitrariness, on favoritism, or on kickback schemes or other fraudulent arrangements. Central control over specifications helps to eliminate undue restrictions which favor certain suppliers.

The discussion in this chapter may seem harsh in prescribing restraints and penalties. The objective, however, is to conserve public funds and inspire public confidence. Any erosion of honesty, integrity, and openness is more injurious to public purchasing than to most other public pursuits, and a shadow of doubt can be as harmful as misconduct itself. *Hence, safeguards must seek to be fail-safe.*

PUBLIC INFORMATION

Safeguards for the integrity of the purchasing process begin with a suitable procurement statute or ordinance supplemented by written procurement procedures, adequate records on each purchase, and public access to these records. Wrongdoing in the expenditure of public funds is more likely in an atmosphere of secrecy, where awards are made in some vaguely defined manner without sufficient substantiation. Records of a transaction should document or reference each step of the process involved in establishing the specification, soliciting prospective bidders, the bidders responses, what the responses were, who received the award, what the contract terms were, and whether the contract was performed satisfactorily. The record should show the basis for any deviation from the normal process, such as making an emergency purchase or finding a low bidder nonresponsible. *Except for unopened bids, trade secrets, and bids on which awards are pending, purchasing records should be available for public inspection upon reasonable request.* All purchasing laws, rules, regulations, and procedures should be published. This is the general rule of most centralized purchasing systems, and experience shows that interested persons do request such records and information from time to time with little or no disruption of the purchasing process. Such requests usually can be handled by clerical personnel. Not only do public records help keep prospective bidders informed and more competitive, they aid in demonstrating to the public that the purchasing processes are being carried out honestly.

By the nature of public purchasing, it is appropriate that sealed bids be opened in public. Virtually all states and many cities and counties make such bid openings accessible to the public. Those who do not should do so; there is no reason to deny or to limit attendance at bid openings.

CORRUPT INTEREST IN PURCHASES

The overall openness of the purchasing process should be reinforced by legal deterrents to specific actions that can damage the integrity of the purchasing process. Parties who can influence the award of a contract should not have any personal interest in that contract. Attempts to influence awards through offers of things of value, as well as acceptance of such offers, should be criminal offenses. The majority of state and local governments have general legislation covering conflicts of interest, but many statutes suffer from the paradox of being so broad that their application to a specific situation is uncertain, but not broad enough to cover all specific transgressions against which they are directed. Therefore, three-fourths of the states have seen fit to incorporate conflict of interest sections in the purchasing statutes, and specific prohibitions in purchasing law or in rules and regulations against the offer or acceptance of things of value to influence an award.

Conflict of interest

Conflict of interest statutes prohibit people who can influence the award of government business from being in a position to profit from their position. Otherwise, they would be constantly torn between self-interest and objectivity. Because of difficulty in determining whether a contract is in fact tainted with self-interest, statutes usually invalidate any contract that could have been influenced by the self-interest of those who are the subject of the law.

Laws governing conflict of interest should cover all elected and appointed officers and employees of a jurisdiction who could act to influence award of a contract. Although it is argued that strong conflict of interest statutes may discourage capable persons from government service, adequate protection in this area is necessary. Questions as to whether statutes should be more or less strict should be resolved in favor of strictness.

Conflict of interest laws now in effect reveal wide variances in persons covered and the prohibitions placed upon them. Persons who are subject to a conflict of interest law range from the chief purchasing official only to all employees of a governmental entity, and in some cases, close relatives of the primary subjects of the statute.

Some statutes prohibit certain individuals from specific activities, such as conducting an outside business, or signing a contract with their own agency or with any other agency of the jurisdiction. More stringent statutes forbid former employees from representing a seller within two years after termination of employment, or giving assistance for two years following employment with the jurisdiction in a transaction which, during that period of time, had been connected with the person's official responsibility.

Statutes often bar participation in businesses that sell

to the government, including serving as partner, board member, officer, or employee of such a firm. In addition, holding any significant amount of stock may be prohibited. One state statute even forbids negotiating or discussing prospective employment with a business that sells to the government.

A model purchasing ordinance prepared by the National Institute of Municipal Law Officers recommends, with provision for exception under certain circumstances, that a purchase order or contract be void in which any officer or employee of the city is financially interested, directly or indirectly. Article 12 of the ABA Model Procurement Code treats the subject of conflict of interest in detail and proposes a variety of civil and administrative remedies.

These diverse approaches to a common problem, or set of problems, are indicative of the need for statutory coverage of conflict of interest in public contracts. As a minimum, the coverage should apply to elected officials and to appointees not subject to civil service or merit system employment, to all employees in purchasing, and to any officer or employee of an agency with respect to purchases made by or for that agency. The latter are often overlooked, even though experience reveals the strongest preferences or favoritism for suppliers and their products are expressed by using agencies.

The coverage also should prohibit those subject to the statute from having a financial interest in an enterprise doing business with the government. The statute should require implementing rules and regulations, and provide for exception under circumstances set forth in the rules, such as where a requirement is available from only one source.

A different aspect of conflict of interest relates to making purchases for employees. In earlier times, this was a widespread practice in the industrial sector, which allowed employees to make purchases from company store rooms and would permit items to be ordered for employees at "company prices." More recently, the practice has decreased substantially in the business community, and it has always been improper in the public sector. Private gain from the purchasing power of the government should be prohibited by statute, rule, or administrative procedure, and 35 states now do so. As a state attorney general wrote in 1938, "No purchases should be allowed for personal use out of private funds under (state) contracts."

Penalties

Among the penalties for violating conflict of interest statutes are payment of damages, the criminal penalties of a minor felony, removal from office, and a permanent disbarment from holding office or employment with the jurisdiction. In most conflict of interest situations, the individual involved realizes that a conflict of interest exists. Because of the serious violation that such a situation does to the integrity of the purchasing system and to confidence in government generally, prosecution as a felony is appropriate. Where the individual involved might not have known of the conflict, he will be protected by the requirement that intent must be proved beyond a reasonable doubt before he can be convicted. Statutes should provide for immediate dismissal from office upon conviction and bar subsequent government employment, unless the conviction is overruled.

Some courts have held that a contract resulting from a conflict of interest situation is void even though it might be the most advantageous for the government. Others have ruled that if the contract results from sealed competitive bidding, then the conflict of interest statutes should not apply. The first finding is the more appropriate. A person who can submit a bid and then be in a position to influence the award, may attempt to use influence to have another bid bypassed. The same can be true where a legislator, executive officer, or employee disqualifies himself from acting on a contract in which he has an interest. This should not give validity to the contract, since a person who disqualifies himself from official acts does not necessarily disqualify his influence.

Every contract resulting from a conflict of interest should be declared void, and the public officer or employee involved should be liable to the government for the amount of any gain realized plus the amount of any loss that the government suffered as a result of the contract. Contracts resulting from conflicts of interest must not be allowed to be profitable. However, innocent people, such as uninvolved stockholders in a corporation in which a government employee held a significant amount of stock, can be unduly injured if the vendor is not allowed any recovery under such a contract. Consequently, the government should limit its liability on such contracts to the provable costs of the contractor.

Kickbacks and Bribes

Statutes covering attempts to influence an award by offering something of value to government personnel use a wide range of terms to describe the types of offers that are prohibited, including promise, obligation, contract for future reward or compensation, emolument, gratuity, contribution, offer of employment, loan, reward, rebate, gift, money or "other thing of value." Some statutes which contain long lists of prohibitions fail to include the important term "giving and receiving." Laws should deal with both actions equally and harshly. One such statute establishes the presumption that when an interested party makes any gift to purchasing personnel, the gift is made and received for the purpose of influencing purchasing decisions. This statute places the burden upon those who present and receive a gift to prove lack of criminal intent, rather than the government having to prove such wrongdoing.

Acts of giving and accepting something of value to influence the award of a contract should be criminal offenses, whether the exchange has the intended effect or not. "Award of a contract" should be interpreted broadly to pertain to the characteristics of a specifica-

tion; to comparisons, tests, or recommendations for award; or to other activities related to the evaluation of bids and offers. Contracts awarded to a party or a firm that sought to influence the outcome by offering something of value to government employee should be declared void. Unlike a conflict of interest where innocent individuals may be involved, where something of value is exchanged to influence a purchasing decision, not only is the receiver culpable but the management of the firm whose representative made the tender can reasonably be presumed to have known about or condoned the action. This presumption should be made a statutory rule. Unless the firm can prove its agent acted entirely on his own, without the knowledge of management, the jurisdiction should be released from current and future financial obligations to the firm involved. If it can be proved the agent acted on his own, the government should be liable only for provable costs. All guilty parties should be financially liable to the jurisdiction for any losses the government incurred as a result of the contract. In many jurisdictions, officials and employees involved in determining awards are bonded, and the government can recover the value of any monetary damage it suffers due to their malfeasance or misfeasance.

Organized Crime

A threat to the soundness of public contracting that has not been fully recognized is the infiltration of organized crime into legitimate firms that do business with government. This is a problem that should no longer be ignored. Some purchasing programs, as a part of the prequalification procedure for their bidders lists, attempt to screen businesses with convicted felons as officers or board members, but few go beyond this. More effort is necessary to help public purchasing avoid business relationships with criminals. Whether purchasing can disqualify a firm with a good performance record by reason of past illegal actions on the part of directors, or key employees, is debatable. Nevertheless, the problem of governments doing business with criminal elements needs to be addressed.

Because information on organized crime activity is tightly controlled, the state purchasing official should open a line of communication with the attorney general's office similar to that he uses to report suspected collusive bidding. Likewise, local purchasing officers should establish liaison with district attorneys and other public prosecutors.

The communication needs to flow in both directions. The legal unit should brief purchasing agents on the types of information available, how to request the information, and how to recognize organized crime. Information that might be considered in disqualifying firms with criminal connections from receiving public contracts should be sent routinely to central purchasing, and central purchasing should keep the legal unit informed of suspicious actions it encounters in reviewing business data, in discussions with company representatives, and in the marketplace generally.

The extent to which the purchasing office can refrain from doing business with firms suspected of organized crime affiliation depends upon the applicable purchasing laws and the nature of the information itself. Some jurisdictions already have as part of statutory criteria for determining a responsible bidder, "The character, integrity, reputation, judgment, experience, and efficiency of the bidder." The usefulness of purchasing in helping to combat organized crime rests largely with statutory authorizations and direction from the legal community.

Contingent Fees

Influence peddling is usually compensated by payment of a fee as a result of obtaining a government contract. A statutory prohibition against such contingent payments is helpful in preventing this activity.

Beyond this, officers and employees of a jurisdiction should be banned from acting as agents of bidders or contractors, or representing them in any manner before the government.

PURCHASING PROGRAM INTEGRITY AND CREDIBILITY

The nature of their duties makes it necessary for purchasing officials to remain independent, free of obligation, and above suspicion. Their impartiality and fairness cannot be compromised, and this must be applied equally to agencies whose needs are served by central purchasing and to bidders and contractors who furnish the needs. There should be a written set of ground rules which describe the proper relationship between purchasing employees and vendors, and which set forth standards of conduct and a code of behavior expected of both parties.

Maintaining the integrity and credibility of the purchasing program requires provisions for and control over a number of disparate factors. For example, there must be a workable procedure for bidders and contractors to file complaints and receive a prompt and fair hearing, and there must be control over circumvention of the purchasing procedures which are prescribed by law and rule.

Other factors include review and approval of recommendations for award of contracts, inspection and testing, the use of bonds, "back-door selling," audits, breach and default of contract, documentation and public records, cost and price analysis, vendor evaluation and the suspension and disbarment of bidders. Some of these are discussed here and some in other chapters.

Credibility and public confidence are vitally significant throughout public contracting, and their absence is damaging to a program even though no dishonesty has occurred.

Circumventing Purchasing Authorization

Obviously, any purchasing program is harmed deeply by actions involving bribery, kickbacks, conflict of interest, or similar acts. When such cases of corruption are discovered, strong and direct action usually is taken to rid the system of the people involved and to prevent a recurrence. However, when agencies merely circumvent the purchasing laws and rules, the situation can appear trivial compared to a case of bribery or conflict of interest. In most purchasing systems, when such unlawful purchases are discovered, no appropriate action is taken, or measures to prevent their recurrence are not adequate, and the problem repeats itself. The total impact, though less spectacular than instances of corruption, ultimately may be more harmful to the purchasing system.

Often circumvention simply takes the form of efforts by using agencies to obtain a preferred brand of an item or to avoid the competitive bidding process. Methods used involve practices such as ordering an item from a vendor without requisitioning in the prescribed manner, taking emergency purchase measures in situations that are not in fact emergencies, and dividing requirements into smaller amounts to bring them below the dollar limit for which competitive quotations or sealed competitive bidding are required.

Strong effective action has not been customary on the part of most jurisdictions in dealing with violations of this kind. Nor is the action usually directed to the source of the problem—the persons who made or authorized the purchase. Some purchasing laws call for after-the-fact approval or review of emergency purchases such that circumvention of the law is not discovered until after the transaction has been completed. In many jurisdictions, central purchasing or auditors regularly report instances where the purchasing statute or rules have been disregarded, but lack of preventive follow-up permits the practice to continue.

The central purchasing office potentially can rectify a specific instance if its approval is required prior to payment being made. It is not uncommon, however, for purchasing officials to ratify unauthorized and improper purchases because of a lack of clear authority or a disinclination to engage in disputes with other agencies.

The purchasing systems that are successful in dealing with this kind of problem are those that place the responsibility squarely upon the using agency personnel who made or authorized the purchase. Legislation in these jurisdictions provides that any such purchase does not obligate the government, and that the person making such a contract, or the administrative head of the agency involved, is financially liable to the vendor. By refusing to give approval, the chief purchasing official can force the agency personnel at fault either to pay for the purchase or go to the legislature and ask for a 'moral obligation payment' to the vendor. This type of statutory provision affords a proven means for exercising control.

"Back Door" Selling

An all too common practice of suppliers and would-be suppliers is that of cultivating favor among program personnel in using agencies for their products and for themselves as suppliers. The cultivation can range from hard-sell tactics to fraternization to expense-paid trips to the vendor's home office or plant to gifts, bribes and kickbacks. More often, however, the relationship is less pernicious. The sales representative is helpful and ingratiating, offering technical data and other information. He becomes a convincing friend of the using agency personnel. It is a sales method that largely by-passes central purchasing, and in doing so creates friction between using agencies and the purchasing office. Frequently, by the time central purchasing receives a requisition to buy, the agency has been sold on a certain item or suppliers, the purchase requisition is accompanied by specifications that are unduly restrictive, carries a note "No Substitution," calls for a delivery or performance time only the favored supplier can meet, or has some other attempted justification for eliminating competition. Under these conditions, when purchasing does its job and opens the specifications to competition, obtains competitive bids, and perhaps awards the contract to a different supplier, the using agency is unhappy and antagonistic toward the purchasing process.

Surveys show that state and local government purchasing officials are almost unanimously of the opinion that "back-door" selling interferes with or impairs fair competition.

The open-door policy of government makes it difficult for public purchasing to control this problem. In contrast to industrial purchasing, it cannot prevent marketing and sales representatives from directly calling on and visiting with user departments. The situation is even more difficult to manage where the agencies, instead of central purchasing, issue the majority of purchase orders. But central purchasing can moderate the effects of the practice by recognizing it in its purchasing manual, by treating it in a booklet or pamphlet for vendors on "How to Sell to the (state)(city)(county) of _____," by keeping administrative heads of using agencies alert to the harm that it does, and most of all, by firmly refusing to be swayed by agency partiality or favoritism.

Another form of "back-door" selling involves nonbidders or unsuccessful bidders undermining indefinite quantity contracts established by the central purchasing office. This problem can be handled, as it should be, by laws and rules that do not allow purchase contracts to be used arbitrarily or permissively.

Pre-Award Review

Almost all states employ some method of review of a buyer's decision, or more correctly, preliminary decision, on the action to take following the evaluation of bids. With the exception of small purchases, decisions regard-

ing award of a contract are usually subject to approval by a buyer's immediate supervisor or a higher purchasing officer, but a number of jurisdictions provide additional safeguards, such as review by legal counsel or concurrence by a constitutional officer or body. In many local governments, action taken under the formal bidding procedure is approved by the governing body, such as city council or board of county commissioners.

Bidder Responsibility and Contractor Performance

Questions arise throughout the purchasing and contracting process concerning the performance capabilities of both prospective bidders and successful bidders. Protecting the public interest includes the prequalification of bidders, which involves criteria for including prospective bidders on mailing lists. Bid security and performance bonds may be required, especially for certain types of contracts, although these alone do not insure that a contract will be carried out successfully. Inasmuch as contracts may be awarded only to bidders deemed to be responsible if a bidder or offeror who otherwise would receive the award is judged nonresponsible, the reasons should be documented for the record. A program of vendor evaluation affords the best grounds for the suspension and debarment of bidders, which should be authorized by statute under rules and regulations adopted for the purpose.

For cases of apparent misrepresentation, breach, or default by a contractor, a well-defined procedure is needed to conduct impartial hearings and arrive at satisfactory remedies, including penalties. The procedure should be established in accordance with statutory authority, which should include requirements for the formulation of implementing rules and regulations.

Resolution of Complaints

The purchasing process is subject to complaints, protests, claims, and controversies. The credibility of the purchasing program is affected by the manner in which disputes are received and treated. Many present purchasing statutes are deficient in not providing or requiring a procedure for hearing and responding to protests and claims, although the enactment of laws governing administrative procedures has helped to fill this void.

In prescribing means for resolving disputes, whether they concern prospective bidders, actual bidders, contractors, using agencies or interested citizens, it is of utmost importance to emphasize the desirability of trying to clear up controversies through informal discussion. Many times, conflicts arise merely from misunderstanding or lack of full or correct information, yet they lead to unnecessary formal proceedings that represent substantial and costly expenditures of time, which the average purchasing program, characteristically understaffed, can ill afford.

Unlawful Purchases

When it is found that a solicitation is unlawful, it should be cancelled. Unless altogether unfeasible, a purchase made or contract awarded contrary to law or applicable rules and regulations should be terminated, unused merchandise returned, and employees who are responsible held personally liable for any costs involved.

Audits

There are two distinctly different kinds of audit that affect the integrity of the purchasing program. One is the authority of the jurisdiction—state, city, or county—to audit the records of contractors and subcontractors as they relate to the performance of a specific contract. This right should be specifically authorized by statute (though frequently this is now not the case) with conditions and procedures for such audits prescribed in rules and regulations. Generally, audits are appropriate in connection with negotiated contracts, contract modifications, and questions concerning a contractor's reliability or the adequacy of its business practices. Such audits need not be performed by the purchasing office. Most often, they probably should be done by qualified auditors employed by other agencies of the government, or by a private accounting firm, but at the request of the chief purchasing official.

The other type of audit important to purchasing is a periodic and systematic review of its own operations. In addition to a fiscal audit, there needs to be a review for compliance with the laws, policies, rules, and regulations which govern the purchasing program. Audits of this kind are usually conducted by one of the other governmental agencies; in most states, for example, they are performed by the state auditor or a legislative fiscal office. As an extension of this, the central purchasing office should be authorized to have oversight of purchasing operations of using agencies, including review of pertinent records.

Other Protections

The soundness and credibility of the purchasing program need to be supported by other policies and practices. A structured inspection and testing program is a valuable asset, as discussed in Chapter 11. The submission of cost and pricing data, and the conduct of cost and pricing analysis, should be required by statute for certain kinds of contracts and under certain conditions to help guard against prices being unreasonable or excessive. The establishment of a policy board to adopt operating rules and regulations, maintain general surveillance over the purchasing process, and help provide a barrier against undue political influence should be given serious consideration by all large jurisdictions.

The importance of adequate documentation and good public records cannot be overstressed. Operating rules and procedures manuals should be careful to designate all points at which and on which documentation is needed and all decisions that call for written determinations to be made.

Finally, it should be remembered that a requirement for purchases and contracts to be based on competitive

sealed bids, publicly opened, is itself a primary safeguard, and that a right to reject any and all bids and offers, in whole or in part, provides further protection of the public interest.

ETHICAL STANDARDS

Many people other than procurement staff are involved in business transacted by a governmental entity. Chief among these are bidders and contractors, and the personnel of using agencies for which articles or services are purchased. In addition, there are those who for political, pecuniary or other reasons may want certain products bought or certain vendors to receive contracts.

Every governmental jurisdiction needs a strong pronouncement to the effect that government is a trust for the people. This can be expressed most effectively in the form of statutory law requiring the adoption and promulgation of ethical standards applicable to all persons involved in conducting and receiving the government's business.

13. Supply Management

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Charge central purchasing with the responsibility for overall supervision and ultimate control over the inventory of and the transfer, trade-in, sale, or other disposition of personal property.

Require that using agencies identify excess and surplus items, declare them as such, and report them to central purchasing.

Provide that the proceeds from transfer, trade-in, or sale of personal property be credited to the owning agency.

Grant central purchasing the authority to dispose of surplus and scrap, or to regulate its disposal, in a manner that it deems to be in the best interest of the jurisdiction.

Authorize transfer of surplus personal property at fair market value to other government jurisdictions and to not-for-profit organizations.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Assign to central purchasing the duty to keep informed of items under federal surplus property, if the federal surplus property program is not under central purchasing management.

Set forth central purchasing's authorities and responsibilities in identifying items as surplus, and provide guidelines for determining the most appropriate disposition method (e.g., transfer, trade-in, sale) for given types of situations.

Require well-defined procedures to encourage and facilitate the transfer of excess or surplus property to or among state or local agencies prior to other disposition.

Recommended Practices

Methods and procedures for handling the sale of surplus products should be published.

Information as to the availability of excess and surplus property should be maintained centrally and made known systematically to using agencies.

Central purchasing should regularly review inventory levels of using agencies to determine whether excess stocks are on hand.

Sales of unneeded items should be held frequently to discourage agencies from holding onto or stockpiling unused items.

Want lists should be used as an effective technique in transferring excess or surplus property.

Where trade-in is to be considered on a particular piece of equipment, the Invitation for Bids should call for bid prices on the new or replacement item with and without trade-in and provide that the award may be made on either basis.

Inventory management, materials management, logistics management and supply management are terms which refer to responsibility for equpiment, materials, and supplies after they are acquired. The responsibility involves storing and distribution, inventory control requisitioning in the right quantities at the right times, transferring unused items between agencies, and disposing of surplus property. It is easy to overlook the importance of this function. Many of the potential savings and other benefits to the taxpayer achieved by expert acquisition can be dissipated and lost through poor property management.

Management philosophy has long recommended that central purchasing should have overall responsibility for the policy aspects of personal property management, as well as general supervision of storerooms and warehouses. In doing so, accountability for the property remains with the program agency which houses and uses it. In the case of a central store or warehouse facility that is operated by central purchasing, however, accountability for that function resides with central purchasing.

Central oversight of inventories that are scattered widely among using agencies has been greatly facilitated by refinements in automatic data processing, and especially the use of remote computer terminals. For the first time, many state and local governments are developing a commodity classification code and a uniform inventory program that applies to all agencies. A valuable adjunct to this can be the development and application of standard replacement schedules for different kinds of equipment.

IDENTIFYING SURPLUS AND SCRAP

The disposition process deals with three categories of items—excess, surplus, and obsolete. For the purpose of this discussion, excess items are those no longer needed by the holding agency but suitable for transfer within the state or local government. Surplus items are those still useful, but the jurisdiction no longer has a reasonable need for them. Excess and surplus derive from any of several causes, including overbuying, decrease in use and resulting inventory levels becoming too high, items being replaced by newer ones, programs being changed or discontinued, or items not functioning properly or otherwise no longer serving the purpose for which they were purchased. Obsolete property is inventory without utility, due usually to technological development, wear and tear, or damage. Obsolete property may be "salvage" with some value because parts can be recovered and reused, or "scrap" with no value except its basic material content. "Surplus property" is the term used broadly to refer to any property being disposed of as no longer needed or usable.

Timely identification of surplus and obsolete material is essential to an effective disposition program. Delayed identification results in higher maintenance and storage costs and further deterioration of the items. As part of its inventory management responsibility, central purchasing should review inventory levels of operating departments and other using agencies to determine whether excess stock is on hand. There is a natural inclination on the part of owning agencies to hoard items for an unknown or undefined future use. The most effective way to overcome this tendency and, overall, to foster an efficient surplus property program, is to allocate the proceeds from disposition of the property to the releasing agency.

The fact that central purchasing has general supervision and ultimate control over inventory and surplus programs should not be viewed as placing purchasing in conflict with using agencies. The arrangement works well for purchasing programs that have this responsibility. Frequently, inspectors who work out of central purchasing and inspect vendor deliveries assist using agencies in identifying and transferring surplus property. Written procedures setting forth guidelines for close coordination between purchasing and using agencies are important in helping ensure success of the program.

METHODS OF DISPOSITION

When items become excess, surplus, or obsolete, it should be the duty of using or owning agencies to report them promptly to the personal or surplus property section of central purchasing. At this point, the surplus property section must examine alternatives as to the most advantageous handling of the items. Using agencies are not usually in a position to determine the best alternative, nor should they be. Disposition is a minor function of a program agency and its normal interest is to proceed in the least troublesome way. Central purchasing, on the other hand, has the vantage point and capability for carrying out disposition to the overall benefit of the taxpayer.

A form designed specifically for reporting surplus property is highly beneficial. In making the reports, the owning agency can designate an amount it wishes to recover for each item, with the understanding the requested figure will not be made public prior to transfer or to the opening of sale bids; also, the figure will not represent a guaranteed minimum return, or govern whether or not transfer or sale is carried out.

The decision by the surplus property section on the disposition course to take depends upon the nature of the items and the needs of other agencies. Items can be refurbished or reconditioned, transferred as is, sold by auction, sealed bid, or posted price, or destroyed. Destruction is rarely necessary.

Transfer

As a rule, the most gainful method for handling an item no longer needed by an agency is to transfer it to another agency that has a use for it. But prior to a decision to transfer, consideration should be given to the potential for recycling. Maximum economy often can be attained by refurbishing the article, as with many types of furniture, or reconditioning it, as in the case of a school bus, either for continued use by the owning agency or for transfer at a higher value and utility.

The property section should have a systematic procedure for improving the potential for transfer. In one state, copies of using agencies' purchase requisitions for certain kinds of goods are processed through the personal property section, which determines whether there may be property available from another agency to fill the need. Other procedures include periodically circulating lists among all agencies of currently available excess and surplus items, and maintaining "want lists." Want lists consist of items that using agencies need but cannot afford, or do not want to purchase new and are willing to wait for. To encourage agencies to avail themselves of this service, the lists should be compiled from any type of requests, written or telephoned, and using agencies should be assured that an expression of a need is not a commitment to accept an item. The value at which the property is transferred may be set either by mutual agreement between the agencies involved or by the surplus property section of central purchasing.

Transfer can be an especially effective technique when imagination finds new uses for items. For example, central purchasing transferred an excess fire engine pumper to an agency which could use it for dust control by watering roads on detours. In another instance plexiglass drums originally purchased for lottery drawings were transferred to prison shops where the plexiglass material

was used for security windows, nameplates, shelving, and hobby shop material.

Where transfers between agencies cannot be effected, some state surplus programs turn to priority lists for transfer or sale to local governmental units or other tax-supported activities within the state, and property transfer becomes another form of intergovernmental cooperation. If an item cannot be transferred, it usually can be sold or traded in, depending upon its condition and the market.

Sale

Preconditioning. A program of conditioning units prior to sale can play sizable dividends, particularly in the disposition of vehicles. Much of the work need only be cosmetic to enhance sales value, such as washing and polishing the exterior, and cleaning the engine, interior and trunk of passenger cars. Good public relations and public confidence are valuable assets to the surplus property program, and these can be enhanced by conditioning vehicles to place them in a more attractive and safe operating condition.

Auctions. The auction method of sale is the standard disposition procedure for some jurisdictions. Auctions should be publicly advertised, supplemented by notices mailed to regular bidders. Professional auctioneers can most effectively handle the sales, as well as assist in the preparations for them. Auctioneer services themselves are competitive and biddable. After the auction is announced, interested parties can inspect the items either at the auction site or at the user's location. Other means for providing information on items to be offered for sale include giving descriptive ratings of the condition of equipment, pointing out odometer readings of vehicles, listing known defects, and providing pictures. Some states hold auctions at different locations to carry opportunities for buying closer to the public.

Disadvantages of auction sales versus competitive sealed bidding are time and costs necessary to transport and assemble items at an auction site, less frequent sales, and longer holding periods for surplus property.

Sealed Bids. Many purchasing programs sell the majority of their surplus, salvage, and scrap items by sealed bids. Sealed bid sales are similar in many respects to sealed bid purchases, and can be handled frequently and routinely. Bids are received and opened in a central office, with property offered for sale on an "as is-where is" basis at locations of using agencies throughout the state. The sale is given public notice, but competition is achieved primarily from solicitations mailed to prospective bidders according to a bidders list maintained for the purpose. Bids are opened at the time and place announced, with the government retaining the right to reject any and all bids. The bid documents carry at least line item descriptions, and interested parties are offered opportunity to inspect the items prior to bidding. Overall, the sealed bid procedure can reach the largest number of prospective bidders and require a minimum of assembly of merchandise and sales preparation.

There is evidence to show that the sealed bid procedure can move surplus property most expeditiously and economically, with sales conducted effectively by a central property section on a weekly basis.

Commercial Markets. Some types of items can be sold advantageously at or through established commercial markets. Among these are antiques or art pieces, livestock, and various kinds of produce grown in connection with agricultural research programs. In such instances the seller, often an auction market, normally retains a percentage of the sales price.

Sale of Scrap. Almost any surplus property can be sold as scrap. A potentially profitable technique that is used too infrequently in selling scrap material is separating it into homogeneous parts or materials. This can be somewhat involved, but the sale separately of like components or materials will often bring a much higher return than their being lumped into a gross list.

Posted Prices. For items for which there is no regular market, or demand is erratic, or prices received on competitive bids or auction are unacceptable, a posted price offers a method of sale which can be effective. In such cases, the price is pre-established and is available to the public on a first-come basis.

Conditions of Sale. The jurisdiction does not sell unneeded property as a charitable venture, but to obtain a reasonable return on things for which it has no further use. Consequently, the government should make it clear to all buyers that it takes no responsibility and makes no guarantees for items sold. To be fair, the sale information should describe the conditions of the items and list known defects, but beyond that it should state that responsibility rests with the buyer. Conditions of sale, such as the following, should be included in advertisements, in solicitations, and in notices posted at the site of the sale:

- It is the buyer's responsibility to remove the items within a stipulated or otherwise reasonable time after the purchase.
- No guarantees or warranties are given by the government for the items.
- Major defects, if known, are listed, but the government makes no claim that all defects are known.
- No sale will be invalid due to defects discovered in the item after the sale.
- The government assumes no responsibility once the items are sold.

Sales to Employees. To reduce opportunities for deception and to help avoid any appearances of improbity in the disposition program, it is sound policy to adopt a rule prohibiting sale of surplus property to any employee of the department or other government agency that owns or is releasing the item.

Trade-In

In replacing obsolete equipment it is sometimes advantageous to trade in the old equipment. Owning agencies

are often inclined to request trade-in as an expedient because it is an easy method of disposal and some value is realized. Experience shows, however, that outright sale, by sealed bids or by auction, usually brings a higher return than trade-in. If it is decided to consider trade-in on a particular equipment item, the Invitation for Bids on the replacement item should call for bid prices with and without trade-in and provide that award may be made either way. Disposition to best advantage can then be determined by comparing the trade-in offers with the estimated sale price for the un-needed item based on previous sales or market analysis.

ALLOCATION OF PROCEEDS

Proceeds from the transfer, trade-in, or sale of excess or surplus property can go either to the credit of the owning or releasing agency or into a general fund. In the latter case, the releasing agency receives no monetary benefit from the transaction, and has little incentive to practice good property management. Even worse from an overall view, if it receives credit for disposition when property is traded in but not when it is transferred or sold, it tends to release items only if trade-ins can be applied even though the net value to the taxpayer is less.

The most successful inventory management programs allocate the proceeds from disposition to the releasing agency. If there is fear that agencies can or will use this as a source of revenue to evade the budget or appropriations process, a budget line item such as "receipts from surplus property" can be set up as a reserve from which expenditures are allowed only by prior budgetary authorization. Balances in the reserve account can revert to the general fund at the end of the fiscal year.

FEDERAL SURPLUS

Like some state governments, the federal government releases certain excess property through intergovernmental programs. Under direction of the General Services Administration, federal surplus property is allocated to several agencies in each state, one of which has a general responsibility and is designated by the state as the federal surplus agency. The state agency, in turn, distributes the property to eligible recipients. Allocations of federal property to states are made in terms of need, population, per capita income, and other factors. Eligible recipients in the state consist of all public agencies together with private, not-for-profit enterprises engaged in educational and health programs. States with well-developed programs use inspectors to screen items regularly at military posts and other federal installations and operate tractor-trailer trucks to transport usable items to one or more warehouses located strategically in the state, where donees can inspect and acquire them. This central agency is responsible for distributing the property in a fair and equitable manner to eligible participants throughout the state.

In states where this program is administered closely with the state's own surplus program, the users have to express their needs to only one governmental unit. Storage of equipment and suppliers for both programs can be in the same facility and potential users can examine both groups of items in one visit, although items from the state and federal programs must be kept physically separated to satisfy federal accountability procedures.

A further advantage of maintaining single supervision over both the state and federal surplus property programs is the ability to match more effectively requests for purchases with the availability of surplus items. Central purchasing management should seek this type of coordination.

14. Cooperative Purchasing

ESSENTIAL ELEMENTS

Suggested Statutory Coverage

The purchasing statute should:

Explicitly authorize intergovernmental cooperative purchasing (by state legislation) between and among state governments, state and local governments, and local governments.

Require that all participants in a cooperative purchasing activity shall be parties to and bound by resulting purchase contracts, including the timely payment of invoices.

Authorize the sale, exchange, and cooperative use of goods and services, including facilities, procurement information, and procurement personnel between and among federal, state and local governments by mutual agreement of the parties involved, without bidding or competitive negotiation.

Authorize that the payment of any moneys arising from the sale or exchange of goods and services between governmental units be credited to the governmental agency furnishing the goods or service(s).

Require that the central purchasing policy or rule-making authority establish implementing rules and regulations applicable to the conduct of cooperative purchasing on the part of the jurisdiction.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Provide that cooperative purchasing be permitted only when the jurisdiction assuming administrative responsibility conducts its purchasing operations according to the principles of open and equitable competition.

Require that parties in a cooperative purchasing program or action enter into a written agreement or memorandum of understanding.

Provide that participation by a jurisdiction in a cooperative purchasing activity in accordance with enabling law and rules be considered as compliance with the jurisdiction's own legal requirements.

Provide that when local governments or non-state agencies participate in purchases under state-awarded contracts, they shall elect to do so prior to the issuance of the Invitation for Bids for any particular contract, and that the IFB shall inform prospective bidders of the names of the jurisdictions who will be parties to the proposed contract.

Recommended Practices

State and large local governments should take a more active leadership role in fostering, designing, and administering sound cooperative purchasing programs. Programs between similar or contiguous local government units should be especially encouraged.

Under merged or pooled arrangements, local governments should consider extending the concepts of consolidated operations to administrative areas such as purchasing.

Specimen agreements or memoranda of understanding should be prepared as guides for effecting cooperative buying, cooperative inspection and testing, cooperative exchange of purchasing personnel, and cooperative purchasing activities.

Cooperative purchasing is an imprecise term that refers to a variety of arrangements by which two or more governmental entities buy under the same contract or agreement. Since cooperative contracting necessarily extends across jurisdictional lines, e.g., a county and the cities and towns within it or two adjoining county governments, statutory authorization is required. This is often handled through "local bills" passed by a state legislature, entailing a specific act for each instance.

There are several types of cooperative purchasing, several forms within each type, and they come into being for several reasons. The most frequent purpose is to seek lower prices through combined requirements and larger volume. Requirements, such as tire retreading, however, or the purchase of welding and similarly manufactured gases, can become less attractive to bidders when intensified volume strains production or distribution facilities. Also, in periods of product shortages or labor difficulties, large-volume contracts are avoided rather than sought by manufacturers and distributors.

Additional motivations for cooperative purchasing are to reduce duplications of effort and administrative costs.

Still another reason for aggregating purchases is to attempt to create a demand large enough to encourage the manufacture of new or modified products which are not commercially available. This can provide incentive, but as a practical matter unique products are seldom needed, and again the strategy does not always work.

A popular kind of cooperative purchasing arises from action by a state legislature to allow local governments and other organizations to purchase under contracts awarded by the state central purchasing, as discussed below. In the early 1970s, a related idea was pursued by the federal government. It sought to have state and local governments and other activities holding federal grants or contracts to make purchases under federal supply "schedule contracts." Most of these contracts were negotiated "multiple award" price agreements which circumvent competitive bidding and are antithetical to principles of public contracting. This effort, fraught with misconceptions and dangers, was short-lived.

FORMS OF COOPERATIVE PURCHASING

The soundest cooperative purchasing programs require that all participants be parties to and obligated by the award of the contract. This means, for example, that an eligible non-state unit wishing to buy automobiles under the state's contract must advise the state purchasing office of its election to do so *prior* to the state issuing the Invitation for Bids, and must agree to be bound by the contract award in the same manner as a state agency. When a city and a county government agree to combine their needs for a certain commodity, both should be committed to the resulting contract. These requirements protect the principle that a bidder should know whose business he is bidding for, and if successful, whose business he has earned. Programs of this kind are operating successfully among a variety of relationships, including state and local governments, state governments and public agencies otherwise exempt from the state purchasing authority, county and municipal governments, and county and county governments.

The weakest programs are permissive arrangements whereby a third-party agency, such as a local government, can purchase under a contract, such as a state contract, if, when, and as it chooses. The state contract prices become, in effect, ceiling prices against which permissive users of the contract can bargain. Such piggybacking practices place the successful bidders, who have won state contracts in open competition, in the position of having their contract prices presented as targets for others to negotiate around or play against. This gives sealed bidding the character of an auction, a concept which the courts have rejected. Obviously, such second bidding discourages bidders from offering their most favorable prices for the state contracts. Moreover, in times of unfavorable market conditions, the permissive third-party users can initiate or increase demands on contract suppliers to the point of severely impairing the ability of state agencies, who are bound by the contracts, to obtain their needs. Loose purchasing arrangements of this type have political appeal, but they are fundamentally unsound and invalidate the principles of competitive sealed bidding. In addition, absence of obligation renders them legally doubtful as to enforceability, but such questionable practices continue to be too widespread.

Slightly less undesirable are programs which, while permissive, afford a measure of protection to fair and open competition. Under these plans a local government has a choice of buying under the state contract or taking its own bids; that is, it is relieved of competitive bidding only if it orders under the state contract. As with the entirely permissive type, however, this arrangement has the basic defect of authorizing that purchase contracts may be used arbritrarily, according to whim or wish.

Another form of cooperative purchasing is based upon central warehousing. Customarily, the largest consumer of the governmental units involved will buy in carload and truckload quantities, and smaller governmental units can either order or pick up certain types of items from the buyer's warehouse. The items usually involve such things as canned fruits and vegetables, janitorial, housekeeping, office, and general maintenance supplies. This type of cooperative purchasing, like the contractual commitment method, protects the principles of competitive bidding because the bidder knows the commitment covered by the Invitation for Bids and by the award.

Highly successful cooperative programs have come about among contiguous counties and municipalities, as in certain areas of Florida, Kentucky, Minnesota, and North Carolina. Three such systems are discussed in a monograph, "Joint Administrative (Consolidated) Purchasing," published in October 1981 by the National Institute of Governmental Purchasing. These programs represent cooperative purchasing in its best form. The arrangements are favored by geographical proximity and the comparative ease of distributing goods and services. An order of paper towels, for example, can be divided and unloaded by the participants from a freight car in a short time. Less common but also effective are arrangements involving two or more cities only or counties only.

Programs between states and their local governments have developed unevenly. Often, the principles of competitive bidding have not been adequately protected, resulting in slack, capricious arrangements. Some of the more recent programs recognize these deficiencies and stipulate that if a political subdivision elects to participate in a particular contract, it does so by estimating its requirements and committing itself to order accordingly. Where it does not wish to participate it must solicit bids under its own competitive bidding law. In one state, California, the local government or school board must submit requests to participate in the state's annual contracts in the form of standard purchase requisitions. The requisitions specify quantities and affirm that participation has been authorized by a resolution of the governing body of the jurisdiction or ordering unit.

Another advantage of requiring authorization by a governing board is to help guard against delayed pay-

ment of bills, as is frequently encountered when outside agencies can order from contracts established by another purchaser. Unfortunately, governmental agencies are not known for paying invoices promptly. Often this is caused by cumbersome accounting procedures which necessitate several approvals for each check or warrant. While the state can exercise direction over the payment process of its own agencies and institutions, it has no control over the payment procedures of local governments, school boards, regional libraries and other entities which may be joint parties in state contracts. Delinquent payments by contract participants almost invariably result in higher prices to the state on subsequent bids, and this added cost is accentuated during periods of high cost of money.

Cooperative purchasing often involves indefinite quantity contracts. These have certain legal characteristics. Indefinite quantity agreements are enforceable when participants who may order under the contract are committed by the Invitation for Bids and by the award to obtain their normal requirements thereunder. Without such obligation, the contract is invalid or legally suspect.

Individual jurisdictions and governmental agencies at all levels, federal, state and local, need to be more acutely aware and farsighted in realizing that their philosophies and practices with respect to cooperative purchasing have the effect of either strengthening or weakening price competition and the precepts of competitive bidding.

THE NEED FOR MORE COMPREHENSIVE LAWS

Obviously, all state and local governments do not have the same statutory requirements or rules and regulations governing purchasing. Differences exist in regard to public advertising, solicitation methods, bonds, and criteria for accepting and rejecting bids. Some laws and rules are more complete or detailed than others. Therefore, when two or more purchasing jurisdictions seek to combine their needs for mutual advantage, questions can be expected regarding compliance with the legal requirements of all participants. This is particularly true where laws fail to provide the kind of flexibility that allows departure from established practices. The enactment of new laws or regulations, or amendment to existing law, is necessary in these cases before cooperative purchasing between governmental entities can effectively be undertaken.

All state and local purchasing laws should contain provisions that treat certain aspects of cooperative purchasing. One of these is explicit authorization for cooperative purchasing with other jurisdictions. While a general provision of this kind is included in some purchasing laws, little is ever specified concerning the degree to which a jurisdiction must comply with its own purchasing rules and procedures when it enters into a cooperative purchasing arrangement. Silence in this area is confusing and often provokes legal problems.

At one end of the spectrum there is a tendency to assume a purchasing official cannot assign purchasing authority to another jurisdiction unless that jurisdiction has legal requirements and administrative policies which are the same or essentially the same as its own. Considering the divergence of policies and practices that currently exist among states, cities and counties, this viewpoint makes cooperative purchasing an academic concept rather than a practicality. Even when a state government, which usually has comprehensive and highly developed purchasing practices, administers a cooperative program, there is the possibility that incompatibility will arise between the state's purchasing practices and those of participating local governments. Administrative differences of this nature unnecessarily complicate cooperative purchasing efforts.

When two or more jurisdictions enter into a written cooperative purchasing agreement, therefore, all should be deemed to be in compliance with their own purchasing laws, rules, and regulations. At the same time, every jurisdiction needs a clear policy that it cannot delegate its purchasing authority to any agency or jurisdiction whose laws and rules do not require that purchases be made in accordance with the accepted principles of fair and open competition.

Another characteristic of a comprehensive statute or ordinance dealing with cooperative purchasing is authorization for governmental units of all levels, federal, state and local, to buy, sell, and exchange goods and services between and among themselves by mutual agreement and without the necessity for bidding. This authorization should extend to the exchange of technical information and even personnel, and to the joint use of facilities.

In making such sales and exchanges, any proceeds derived should go to the credit of the agency which furnishes the goods. This can be a matter of budget policy, very similar to that of handling the proceeds from the sale of surplus equipment and materials. There should be clear understanding that the vitality and success of either or both programs, cooperative purchasing and disposition of surplus goods, will be severely hindered if the proceeds are directed away from the agency which supplies or gives up the goods or services.

Two other provisions are important. First, a requirement that under a cooperative purchase contract, all participants must be committed to obtaining their needs under the contract and in accordance with the contractual terms and conditions, including making timely payments. And second, that by reason of a jurisdiction participating in a cooperative purchasing agreement, no employee of the jurisdiction shall be adversely affected as to salary or other employment benefit.

It can be expected that cooperative purchasing will grow, perhaps extensively over the next few years. To encourage this and help it be effective, jurisdictions must enact or modify appropriate statutes. No serious observer advocates a nationwide uniform law. The dif-

ferent ideas and approaches that diversity produces are largely responsible for the continuing innovation that occurs among state and local purchasing programs. But the Model Procurement Code recommended by the American Bar Association in 1979 will, in time, have a salutary effect in leveling much of the unevenness in present laws and rules.

IMPLEMENTING COOPERATIVE PURCHASING

Cooperative purchasing usually comes about through initiatives on the part of government agencies and jurisdictions, but also can develop from two or more jurisdictions participating in a joint project. Joint endeavors may include non-government agencies, for example where a state mental hospital, a state school for the handicapped, a county general hospital, and two private hospitals need to buy and have installed a common telecommunication system. There is a growing trend to seek solutions to society's problems through various combinations of federal, state, local government and private agencies.

In some instances, therefore, cooperative purchasing is a voluntary arrangement, self-initiated; in other instances, it is dictated by the nature of a project.

Selecting an Administrative Focal Point

In a cooperative purchasing arrangement, one of the participating jurisdictions should be designated to administer the acquisition process. Deciding which shall serve as the lead jurisdiction, however, often is difficult. It is not unusual for smaller participants to be reluctant to relinquish their purchasing authorities. This can be attributed to a fear, even though false, of losing independence and autonomy and can represent a formidable barrier. Where cooperative purchasing arrangements are voluntary and when they provide savings to the smaller jurisdictions, this attitude has little justification. It is usually practical to assign the responsibility to the unit with the largest staff and most highly developed technical capabilities, except where special expertise may exist or where it has been agreed to divide the work among the jurisdictions involved.

Under multi-funded programs, when one of the units of government is to have title to the article to be purchased it logically should handle the acquisition.

NEED FOR ACTION

Cooperative purchasing has many advantages and can serve to foster other intergovernmental cooperation. Aside from the economies of volume buying, it assists in reducing much duplication of work in such areas as preparing specifications, soliciting bids, and testing products. But in addition to favorable laws and implementing regulations, a successful program will depend upon energetic leadership and a spirit of cooperation.

State and large local government purchasers can and should take a more active leadership role in designing and administering these programs. Some states, for example, survey local jurisdictions when determining which items are candidates for term contracting. The surveys show whether or not the local jurisdictions have need for these items and in what quantities. Copies of local government specifications are requested as input to the state's program of developing standard specifications. In addition, some states conduct periodic workshops for state and local purchasing personnel to exchange ideas and information and to improve mutual understanding and cooperation.

It is important for local governments to do their part. They have many avenues for cooperative efforts, especially among each other. They must overcome apprehension that they will be subordinated to another government, as well as any strong tendency to favor local suppliers. Local entities must recognize their responsibilities to serve the public interest and to approach their purchasing mission with a professional management outlook. They must be willing to make contractual commitments and adhere to the principles and results of competitive bidding.

Some local governments are already consolidating operational functions, such as police, fire, and sanitation, under merged governments. Extending this concept to administrative areas such as purchasing could pave the way for significant advances for many smaller and medium-sized governmental units.

Pooling efforts and resources is a natural forerunner to combined operations under merged governments, and they offer numerous possibilities for improving capabilities and services. For example, since there is a minimum practical size for a local government to employ a full-time purchasing professional, the pooling of purchasing functions among several contiguous governments can afford professional staffing to the benefit of all the participants. The management information systems of several governments, if computerized, could be consolidated under time-sharing arrangements. Pooling arrangements can also be applied to specialized technical functions, such as commodity cataloging, specifications, inspection and testing, training, economic analysis, buying strategies, and disposing of surplus and scrap.

There are other new forms of cooperative arrangements being explored which could prove fruitful. One is the concept of two or more states joining in a common contract for some particular commodity or service. Such an endeavor raises both legal questions, which may not be difficult, and economic questions, which may be complex. The long-range impact of aggregating purchasing power in this manner has not been examined.

Another effort, but one which has had one or two false starts, involves both state and local governments and the federal government. It seeks to establish a program for exchanging information on specifications and testing for many individual products, which could

eliminate enormous duplications of effort. Even more important, such a program could concentrate energies to develop performance standards which would serve as incentives for manufacturers to innovate and offer more suitable products representing greater value.

CONTRACT DISPUTES

Contract Disputes

For practical purposes, differences which arise under cooperative purchasing between a prospective bidder, a bidder, or a contractor and the purchasers, should be handled by the lead jurisdiction according to its procedures for protests and remedies. Such controversies may relate variously to specifications or other provisions of the Invitation for Bids, the evaluation of bids and award of contract, or to subsequent contractual matters, including failure to comply with deliveries or specifications. However, there are some actions over which the lead jurisdiction has no control and for which it should not be accountable nor have to resolve. Among these are violation of contractual conditions, including late payments, on the part of any of the other participating agencies or units. For better concurrence and control over their respective duties and responsibilities, all participants in a cooperative purchasing plan should enter into a written agreement or memorandum of understanding which includes the handling of disputes.

Improvement and enrichment of the procurement process is linked inextricably to each level of government. Local governments have tangible opportunities and responsibilities to work more effectively with other peer jurisdictions. Intergovernmental cooperation needs to be encouraged, facilitated, and nourished at the state and intermediate levels to the benefit of individual purchasing programs and to obtain greater benefits from available resources. In the final analysis, no matter how a tax is levied, or what level of government collects it, to the taxpayer it represents public money that deserves to be spent most advantageously.

15. Professional Development

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Embody as part of the policy statement in the purchasing law an affirmation of the management role of public purchasing officials. (See also "Purchasing Structure, Policy, and Authority," Chapter 3.)

Provide a statement of intent encouraging professional competence, including training programs for purchasing staff and affiliation by purchasing officials and staff personnel with one or more professional purchasing associations.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Encourage standards that aid in the employment of personnel with training and purchasing experience.

Establish policies of recruiting personnel for central purchasing from purchasing staffs of using agencies.

Recommended Practices

The central purchasing authority should provide for specific funding in the agency budget for training and professional development, including formal course work; an updated departmental technical library; memberships in local, state, and/or national purchasing associations; and travel to observe other purchasing units.

Continuing management and administrative experience should be required of technical staff. For example, the staff should become members of committees and task forces (i.e., the purchasing representatives for such groups), exposed to researching and writing policy papers and the preparation of budgets.

The central purchasing authority should support professional certification and encourage professional staff to qualify for appropriate certification.

Associations of public purchasers should lead the way in formalizing a body of requirements and an educational curriculum in the field of public purchasing.

Purchasing associations should incorporate specifics of career education into suggested position specifications and educational standards for purchasing.

Public purchasers need to establish a common basis in theory to ensure that the principles and standards of good public purchasing are applied consistently.

Efforts to establish a single national certification program endorsed and supported by all public purchasing associations should be expanded and supported.

While statute and administrative law, policies, procedures, and organizational structure mesh to provide the mechanism for public purchasing, only people can make the mechanism function.

This chapter discusses the roles of people both in and out of the mainstream of state and local government purchasing who in a variety of ways affect and implement the procurement of goods and services. It is concerned primarily with proficiency on the part of state and local government purchasing personnel, and with orientation necessary for those who must support purchasing programs through executive, legislative, and management roles.

Discussions dealing with an effective level of performance, and the effort necessary to achieve and maintain that level, frequently bog down in semantics. There has long been discussion as to whether purchasing, private or public, is a profession, and there is persistent difficulty in arriving at agreement on the definition of "profession," "professionally," and "professional" as these words relate to levels of performance in public purchasing.

Whether or not public purchasing is a profession in the strictest sense of the term, public purchasers have the duty to act professionally; that is, to exhibit conduct in accordance with high technical and ethical standards.

There is little doubt that those charged with public purchasing responsibilities strive to maintain professionalism in their work in order to improve their competence, and in the process to gain recognition and status. In purchasing as in other fields there are values of pride and worth, there are standards and ideals, and there are specifics of conduct and performance. The ingredients of technical and ethical standards in public purchasing include an essential level and competent application of knowledge, a personal and public discipline of performance, and the acceptance of responsibilities and accountability inherent in the authority and duties of the occupation.

THE ESSENTIAL LEVEL OF KNOWLEDGE

Educational Basics

Although from the historical point of view, formal curricula to prepare for the practice of purchasing in either the private or public sector have been limited, the importance of the work is becoming increasingly recognized as an eductional subject. As one of 10 basic elements in its *Report* to the Congress, December 1972, the Commission on (federal) Government Procurement emphasized the need for education and training of purchasing personnel. Subsequently, the Federal Acquisition Institute (FAI) was established, and in August 1981 the Institute listed more than 275 accredited institutions of higher education in the United States which are providing procurement education programs and courses. The majority of these, by far, is directed to industrial and private sector purchasing, however, and the opportunity to pursue an educational discipline leading to a specific advanced degree in public purchasing remains almost nonexistent.

Present generations of public purchasing agents have come to their careers often inadvertently and accidentally. They have been prepared educationally in a variety of ways, including many as licentiates in such formal professions as law, engineering, and pharmacy, and others with grounding in principles of economics, or business or public administration, but almost always without specific formal teaching of government procurement practice. The absence of an explicit discipline leading to a degree in public purchasing does not mean there is not opportunity to satisfy generally an educational background needed in public procurement. Nevertheless, the present education of public purchasers is a mosaic of happenstance. It is time, therefore, to recommend that the specifics of career education be incorporated into personnel position specifications and into educational standards which are or can be established by professional purchasing associations.

For the part-time public purchaser or for those who come to the field later in a career, there are resources for furthering one's formal training by a variety of courses, seminars, and institutes offered by colleges and universities. The orientation of much of this continuing education is towards industrial purchasing, but the government procurement officer can find substantial value in these opportunities.

The educational needs and requirements of public purchasers have changed as purchasing has evolved through several phases. The first period dates to the 1800s when statutes concentrated on contracts for consturction and public works and were concerned largely with protecting taxpayers against favoritism and fraud. The purchaser of equipment, materials, and supplies was almost exclusively a technician involved in practices that demanded little educational preparation.

Shortly after World War I, the second stage, a movement to centralize purchasing began. The economic depression of the 1930s, accompanied by an urgency to get more value for the tax dollar, provided impetus in this direction. Centralization called for more highly developed operations, and greater need became apparent for a formal discipline of purchasing education.

A third phase began during and immediately following World War II. The magnitude and technological complexities engendered by that conflict demanded a more knowledgeable procurement capability together with the exercise of new approaches, improved techniques, and higher expertise.

Purchasing is now in a fourth phase, with a growing emphasis on purchasing management.

The purchasing manager is beginning to play an increasingly active role in the executive decision-making process, as government management recognizes the value of contributions that can be made from purchasing experience. Yet, there are data and expertise that purchasing should provide to the decision-making process in much greater depth and detail than takes place at the present time. Decisions as to whether or not a project should acquire a given configuration of items, or the kind, amount, and degree of their capability, should not be made without taking into account the knowledge and expertise of purchasing professionals. Purchasing should serve also as major adviser in various areas of feasibility studies, considerations of alternatives, and cost-benefit and cost-effectiveness analyses.

Continuing Education and Training

The role of educational advancement as an integral part of management relates both to formal education and to maintenance and improvement of the level of performance on an ongoing basis. There is no question that the experience of day-to-day operations contributes substantially to the growth of knowledge and expertise of a government purchasing office. Valuable as this experience is, however, it represents at best an unstructured form of education. There is need for formal training and for instructional programs to supplement on-the-job knowledge and experience.

This requirement is not being met well by state and local purchasing. State purchasing officials report that 12 states provide a special training for new employees but only five states have regular programs of in-house training for the entire technical staff. Twenty-four states indicate they rely upon others for continuing educational programs, and five states indicate they have no formal program at all. The results of a nationwide survey of 1,047 counties and 545 cities show that only 9 percent of the counties and 13 percent of the cities have planned programs.

These statistics reveal a serious deficiency in the way purchasing programs perceive the imperative to raise their level of competence. While the surveys did not go into great detail as to the extent of continuing education provided by other than the purchasing activity itself, it appears much of it is through institutes and seminars of-

fered by universities and colleges on an as-available basis, with little long-term program structure. These programs need to be shaped and formalized by a body of requirements which probably can best be expressed through professional associations of public purchasers. State and local governments, in turn, must provide funding for training and professional development, including active memberships in professional groups, establishment of technical libraries, exchange visits with comparable purchasing activities, and formal course work.

Paraprofessional Development

Another aspect of professional development arises from the fact that while the recognized professional, a doctor for example, practices his profession, not all those in the field of medicine are doctors or professionals. Similarly, law clerks and legal secretaries are not considered professionals in the same sense as those for whom they work. Purchasing also requires divisions within the discipline. Those with suitable education, training, and experience occupy positions of authority and responsibility. Others in various staff and routine administrative positions, although working in the field of purchasing, cannot be said to be functioning as professionals. Nevertheless, the requirement for progressive training and education among this group is also important.

Uniformity of Principles and Standards

Professions are built around bodies of knowledge that have been reduced in one fashion or another to an accepted set of rules or principles and standards that are both formalized and uniform. They are used consistently by all professionals regardless of the time or place in which they may be practicing. Uniformity is especially important if the work is to be recognized as a unique discipline with consistent application under the same or like circumstances.

Public purchasing can be measured in this respect against the long-established professions because there is an extensive body of knowledge pertaining to the practice. However, there is little uniformity among the federal, state, city, county, and other governmental units in the application of this knowledge. This does not mean that public purchasing must become monolithic and have identical practices and procedures for every purchasing jurisdiction. Different jurisdictions have different problems. Flexibility in practice is necessary in public purchasing. There remains a need, nevertheless, for public purchasers to join in a concerted effort to establish an underlying commonality that engenders consistency in the application of principles and standards. This publication is directed to the goal of identifying both the principles which define objectives and purposes, and the standards as the means to accomplish them.

Professional associations of public purchasers are developing the necessary structure of uniform principles and standards. There are local, state, and national level associations which provide forums for public purchasers to expand the knowledge of public purchasing and to define personal and public disciplines of performance. Purchasing officials and their technical staffs should be encouraged to become active members of one or more such associations to broaden their professional insights and to contribute to the betterment of the profession.

CERTIFICATION

The need for identifying responsible purchasing performance among individuals who have attained a prescribed level of qualification is evidenced by the fact that several purchasing organizations, including the National Institute of Governmental Purchasing (NIGP), the National Contract Management Association (NCMA), and the National Association of Purchasing Managers (NAPM), offer programs of certification. The programs provide opportunities and requirements for purchasers to demonstrate their capability to meet criteria for knowledge and skills necessary in purchasing and related fields. Although the programs promote the recognition of a candidate's professional competence in the field of purchasing, they have varying requirements for educational experience. Written and oral examinations are usually conducted to supplement specified mixes of academic credits and experience. Most of the programs initially provided a limited period for the "grandfathering" of known experts.

In 1978, the National Institute of Governmental Purchasing was joined by the National Association of State Purchasing Officials in setting up a Universal Public Purchasing Certification Council and program. The move was designed to more effectively promote and assure professionalism in public purchasing. The program provided criteria and means for attaining two levels of professional competence. Affirmation as a Certified Public Purchasing Officer (CPPO) denotes an individual has attained a prescribed competence in the management and supervision of purchasing in governmental agencies, jurisdictions, and public institutions or authorities. Denomination as a Professional Public Buyer (PPB) signifies an individual is competent as a buyer in public purchasing.

Scope of the Uniform Certification Programs for Public Purchasers

The Universal Public Purchasing Certification Council recognizes the public purchasing function is carried out by persons in all levels of government and in different types of organizational arrangements. The certification requirements, therefore, were established to meet the needs of all public entities—whether federal agencies with billion dollar annual procurement budgets, state agencies with multi-million dollar procurement outlays, or small municipalities with annual procurement expenditures in the thousands. Requirements for professionalism at any level of public purchasing activity are essentially the same.

More recently, developments with respect to professional certification have moved nearer to a long-sought objective. Leading professional organizations are uniting to create a joint body to oversee and administer a single accreditation program. A Council on General Certification would provide a procedure for testing the basic knowledge necessary for an individual to perform in a professional manner, whether the work is in the private or public sector, industrial or governmental. The certification likely will be designated as a C.P.M., to represent a general certification in procurement and materials management.

This goal may be reached sometime in late 1982, and would involve direct participation on the part of NAPM, NCMA, NIGP, NASPO, and the Society of Logistics Engineers. Associate members of the Council would include the Institute of Cost Analysis and National Property Management Association, with the Federal Acquisition Institute lending its endorsement and support.

INTERFACE WITH PURCHASING'S PUBLICS

The development of public purchasing has been accompanied by the characteristic tendency of practitioners to view their efforts in an aura of great specialization, if not outright mysticism. Abstruse and esoteric language, however, hinders good communication in government. Seeking status by this approach is not prudent or necessary. Government purchasers must communicate freely and lucidly with constituent agencies, prospective vendors, contractors, other professional groups, and the general public if the duties of public procurement are to be performed effectively.

Communication

Purchasing professionals need to communicate to the publics they serve a clear understanding of the level of knowledge, the personal and public discipline, and the range of responsibility and accountability which the purchasing activity requires. This publication can be a basic means for promoting this communication.

Absorbed in the day-to-day tasks of procurement, public purchasing officials frequently neglect upward reporting. A town chairman, a mayor, a county board chairman, or a governor is receptive to reports of purchasing activity. It is a fascinating business, sometimes an amusing one, and a good story can do a great deal to establish understanding and appreciation of the efforts of a central purchasing authority.

This publication emphasizes the role of the purchasing official in government management. Participation often pays dividends to the public, as when a purchasing agent serves as a member of a building committee and can assist in necessary planning rather than become involved when the structure is nearly completed and has arrived at unrealistic or impossible deadlines for obtaining and installing equipment.

Public purchasers alone and within their professional associations must reach out to establish dialogues with other disciplines. Purchasing cannot be practiced in a void, and close liaison with budgeting, accounting, and management information services inevitably improves purchasing performance.

Professionalism can be viewed as the hallmark carried by a profession, but that mark must be etched carefully as the profession builds. Public purchasing, in a unique way, is faced with a persistent challenge to inspire and merit public confidence. It recognizes that public confidence is earned by demonstrated performance of high quality and reliability. Public acceptance is reinforced by the central purchasing authority placing increased emphasis on accountability at all points within the procurement cycle.

THE PROCESS OF EVALUATION: PROGRAMS AND PEOPLE

Discussion of the roles of people both in and out of the mainstream of state and local government purchasing is of necessity somewhat abstract. There is, however, an opportunity inherent in the material presented in this publication to permit the evaluation of a public purchasing program, which also is a measure of professional development.

The exercise involves weighing actual performance against the essential elements identified in the text. While the evaluation may be largely subjective, an honest appraisal reveals a great deal about the state-of-the-art and the state of professional development. Repeating the exercise six to 12 months later could disclose a gratifying comparison.

Although purchasing started out primarily as a buying function, it clearly is no longer so limited in scope. The evolution of increasingly complex items that are subject to obsolescence in relatively short periods of time requires that public purchasing officials remain up-to-date in technical knowledge, related information systems, and new purchasing techniques. Also a successful program must have the flexibility to adjust to varied and changing market conditions where supply and demand for different commodities are at times relatively in balance and at other times quite unequal. The essential need for continuing professional development in the field of public purchasing is increasing with its growing responsibilities.

16. Manuals

The value of well-prepared purchasing manuals as the primary means of providing guidance and information continues to gain recognition. Few jurisdictions have not developed a policy manual or an operations manual, and a substantial majority uses both.

Purchasing manuals must cover different subjects, and this chapter discusses them in three categories, or groupings: (1) a policy manual, which also can be designated as a manual of rules and regulations, or of administrative procedures since many states have enacted statutory requirements for the formulation and publication of administrative policies and procedures by all departments and agencies; (2) an operations manual, or manual of internal practices and procedures; and (3) a vendor manual, which often takes the form of a booklet entitled "How the (State/City/etc.) of (_____) Buys," or "How to do Business with the (State/City/etc.) of (_____)."

Neither the initial preparation nor the subsequent upkeep of a purchasing manual is a simple task. This chapter will look briefly at coverage suitable for each of the three types, with emphasis on or reference to keeping in mind the essential elements listed under preceding chapters.

Unfortunately, trial and error appears to be the usual method of learning that a single manual does not best serve the purposes of setting out policy, describing internal procedures, and imparting information to suppliers or potential suppliers. To help prevent further repetition of the experience, this discussion considers there is need for three separate manuals or equivalent sets of written instructive material.

POLICY MANUAL

Of the three, the policy manual is the most fundamental and critical. Its primary purpose is to set forth the provisions of the purchasing statute and the rules or regulations that are established to carry out these provisions. In doing so, it provides an overall description of the jurisdiction's purchasing program. Copies of this manual should be at hand in the administrative office of every department, institution, and agency; in the requisitioning office of each using agency: in the offices of legal advisers; and in appropriate institutional and public libraries, including the legislative library.

Each professional staff member of the central purchasing office should maintain an up-to-date, individual copy of the policy manual, as also should each member of the policy board or other rule-making authority.

The policy manual identifies and delineates the authorities under which the purchasing program functions. Many authorizations are expressed in the form of duties and responsibilities. In addition, the manual should discuss public purchasing principles and the goals of the program. This can be done effectively without getting into procedural details, which are better left to the operations or internal procedures manual. For example, the policy manual can explain the need for vendor evaluation and establish criteria for suspension or debarment, while the operations manual prescribes the steps to be followed, the forms to be used, and types of documentation required. Similarly, the policy manual can discuss the purpose and uses of bidders lists, with the operations manual detailing the procedures for adding suppliers and maintaining the lists.

Contents of the policy manual can be divided generally in much the same manner the essential elements are grouped in this publication. Or other ways of arranging the material can be equally useful. In any case, the manual should have an introductory section explaining its purpose and rationale, and a section at the end for addenda and other material which may not lend itself to the main text. An organization chart of the central purchasing office and its place in the government structure and a table of contents are necessary ingredients.

Completeness is important. Surveys indicate that many state and local governments do not currently have statutes or rules that authorize either a number of things they should be doing or things they are in fact doing. Many of these deficiencies can be remedied by adoption of additional rules, regulations, or administrative procedures. The policy manual should set forth or otherwise identify all authorizations, statutory and administrative, in order to provide competent purchasing guidance and withstand legal challenges.

Laws and rules should be cited verbatim in the manual, including not only the purchasing statute itself but portions of other laws of the jurisdiction which apply to public contracting, such as the price-fixing section of an antitrust statute. Apart from, or in addition to, legal coverages, the policy manual should discuss the purposes and objectives of the jurisdiction's purchasing program. This type of review speaks to philosophy and to results expected of the program, e.g., when low initial price is sufficient or further evaluation is needed in determining economy and the award of contracts. It should also address attitudinal and cooperative relationships between the central purchasing office and the using agencies; professionalism and training endeavors; methods of purchasing and contracting, such as formal bidding, informal purchases, and term contracts; and the respective roles of central purchasing and using agencies in developing specifications and conducting inspections and tests.

OPERATIONS OR PROCEDURES MANUAL

An operations manual establishes and describes internal procedures. These should be set out in considerable detail, with the use of diagrams and flow charts where appropriate. The manual should be written for use by all personnel in the central office and in using agencies who are involved in the purchasing and supply process.

Although the operations manual is prepared, issued, and maintained, as are the policy and the vendor manuals, by the central purchasing office, internal procedures should also cover certain actions by using agencies, especially those relating to requisitioning and receiving goods and services and ethical relationships with vendors. In depicting the requisitioning process, the procedures manual should set forth the circumstances under which, and the means by which, a using agency should contact central purchasing for discussion, assistance, or other information prior to preparing a requisition for purchase. For some types of requirement, this communication should begin when a proposed need, such as a copying or duplicating system, is only the gleam of an idea, or when planning the equipment for a new building or renovation is just getting underway.

Essentially, a procedures manual documents or prescribes all of the steps of the procurement process, from the origin of acquisition to the final conclusion of a project or disposition of an item. In doing so, it best follows a natural sequence from use of a requisition form to a receiving report or a complaint-to-vendor form. Depending upon organizational duties, purchasing may or may not be concerned with approval and payment of invoices and other accounting functions. But the manual also must detail activities outside the straight-line flow of acquisition. For instance, the forms used and steps involved in establishing and maintaining bidders lists must be shown. The commodity classification system, the activities surrounding its upkeep, and the use of item codes in purchase documents and reports must be explained. The work of specification advisory committees and procedures involved in selecting them and acting upon their recommendations should be described. Some jurisdictions may want the manual to cover the duties and job descriptions of purchasing personnel.

After the policy manual has authorized the use of different types of purchase specifications and called for procedures for developing them, the operations manual should spell out steps to be followed in preparing and using each type. In establishing standard specifications and qualified products lists, for example, the procedures should require review of drafts by representative using agencies and bidders or manufacturers. Similarly, procedures for implementing requirements for cost and price analysis or for inspecting suppliers' plants should be particularized.

Even if the policy manual addresses the matter of conflict of interest and other ethical problems—and few do it adequately, others not at all—an operations manual seldom has much to say about them. This failing should be corrected. Both policy and procedures should seek to define and prevent actions related to such things as doing business with one's self or with those who can influence purchasing decisions, using the public purchasing power for private advantage, back door selling, and undue association with bidders or contractors.

The degree of detail of subject matter to be set out in the operations manual is affected necessarily by the nature of each topic, but any question should be resolved on the side of greater detail. Thus, in designating the content of purchase requisitions prepared by using agencies for central purchasing, both the requisition form itself and the procedures manual should specify the completeness of information to be furnished. Such detail can extend to requiring that delivery be stated both as *desired* and *required,* monthly or quarterly usage be shown for each item requisitioned, etc. In addition, the manual needs to speak to other aspects of requisitions which may have to do with authorized signatures, approvals required, and certification of availability of funds.

It is characteristic of purchasing operations that the length of time involved in processing a purchase request is a persistent matter of concern to both the requisitioner and the purchasing office. The effective use of computers with in-house or remote terminals can greatly facilitate the turn-around time for routine orders, and especially for items available under existing term contracts. On requirements which involve the preparation of specifications and the receipt and evaluation of bids, however, the time can vary from one week to 60 or 90 days, depending upon the complexity of the purchase and perhaps the necessity for testing samples of products offered. The policy manual should assign the central purchasing office the authority to determine lead times for submitting purchase requisitions, and the times that are needed for issuing solicitations and for receiving and evaluating responses. The procedures manual should contain a list of normal lead times for different types of requirements and different methods of purchase, and using agencies should be apprised *with emphasis* that the lead times must be taken into account in planning for the receipt of goods and services.

Coverage of several subject areas to be included in the operations manual has been mentioned, such as commodity coding, requisitioning, and specifications development. Though not intended to be complete, a listing of other coverage would include:

- Establishing and maintaining bidders lists, involving locating new sources of supply, vendor performance and evaluation, and determination of bidder responsibility pursuant to criteria prescribed in the policy manual.
- Review of Invitations for Bids and Requests for Proposals prior to issuance.
- Receipt, opening, and tabulation of bids and proposals.
- Responsiveness in bids and offers, including mistakes in bids both seeming and obvious.

• Handling of proprietary information, trade secrets.
• Circumstances under which all bids may be or are rejected, including collusive bidding and resolution of identical bids.
• Handling and return of samples.
• Handling and return of bid security.
• Notifications to bidders, successful and unsuccessful.
• Small purchase procedures.
• Contract administration, including expediting, enforcing provisions for price reductions, handling requests for price increases, and requiring contractor compliance.
• Handling protests of bidders and contractors and complaints from using agencies or the public.
• Transfer or other disposition of excess and surplus property.
• Review of purchase orders, and recommendations for award, including dollar limits applicable to different levels of staff responsibility.
• Steps and procedures for carrying out different kinds of purchases, including a definite quantity purchase for a single agency, multiple-agency definite quantity scheduled purchases, indefinite quantity term contracts, emergency purchases, competitive negotiation, and noncompetitive negotiation (sole-source purchases).
• Documentation, records retention, and availability of records to other agencies and the public.
• Reporting anticompetitive practices and suspected collusion to appropriate legal authorities.
• Responsibilities of using agencies, including their suggesting local sources of supply, record-keeping, contract administration, in-house testing of products, reporting contactor performance, and reporting surplus property.

Certain other aspects of purchase and supply, such as receiving and inspection, and inventory management, must also be detailed in the operations manual unless, as some jurisdictions have found to be advantageous, they are covered by separate manuals written specifically for these subjects.

VENDOR MANUAL

The vendor manual should contain information pertinent to the concerns of both a prospective supplier who may be interested in bidding and a supplier who has bid successfully and received a contract. A tendency that is natural, perhaps, finds most vendor manuals directed almost exclusively to the prospective bidder. More coverage is usually needed in the form of information for a current contractor.

Instruction is the chief purpose of a vendor manual, but it should also offer some general information as to the background, organization, and overall philosophy of the jurisdiction's purchasing and contracting program. The manual should recognize the importance of the partnership, and the proprieties, that exist between the jurisdiction as purchaser and the vendor as seller, together with the obligations and courtesies that attend an open business relationship.

Though the manual should be brief and concise, often printed in a 4'x6' pocket size, space should be allowed for an introductory statement. The introduction should be phrased in a friendly, informal way, setting the tone for the material to follow which also should be written in an easily readable, non-bureaucratic style. The introduction should include an invitation to visit the central purchasing office for further details or a more complete understanding of topics discussed in the manual.

Subjects covered can be arranged in a consecutive order beginning with the procedure for being included on the bidders list and proceeding to the obligations of a successful bidder to complete a contract and submit an invoice for payment. Not to be overlooked, however, is the need to include information concerning various statutory requirements and implementing rules, and a clear expression of policy governing the offering and receipt of gifts or gratuities of any kind. Also, a section of the manual should describe the sale of surplus property.

A general checklist of topics to be treated in the primary information and instructional portion of the manual would include:
• The kinds of goods and services purchased.
• The location and mailing address of the central purchasing office.
• The nature and structure of the bidders list and the forms of public notice given of the proposed purchases.
• The nature of basic statutory provisions, and of governing rules and policies, but not necessarily quotations or citations.
• Types of specifications used, including "brand name or equal" and qualified products lists, and any emphasis given to specifying performance characteristics.
• How purchases are made; for example, by competitive quotations, sealed bids, sealed proposals, two-step bidding, and under emergency and sole-source conditions.
• Procedures for submitting bids and proposals and holding public bid openings, including policy regarding late bids.
• How responsiveness of bids and responsibility of bidders are determined.
• Criteria for evaluating bids and proposals, including rejection in whole or in part.
• Any contractual terms and conditions customarily used that might need to be especially called to the attention of a prospective or a successful bidder.

The value of a vendor manual, both for informational and instructional purposes and as a medium for improving and maintaining public relations, is being recognized to the extent that more than three-quarters of the state and local governments report having developed such a publication. And of these, a high percentage are new or revised as of 1980 or 1981. For jurisdictions which do not yet have a vendor manual, or which need to update or rewrite one, it would be helpful to review the products of their colleagues. Some of the manuals, in terms of format, including use of simple line drawings or other il-

lustrations, language style, and content, are more effective than others. Examination of different vendor manuals also shows they can be small and concise without sacrificing their purpose.

Appendices
General Commentary

The Appendix consists essentially of four kinds of information: (a) surveys of the current structures and practices of state and local governments as they relate to the purchases of equipment, materials, supplies and services; (b) legal references to matters of public contracting; (c) literature treating various aspects of public purchasing, and (d) a glossary of terms often found in such literature, including this publication.

Two of the four surveys were conducted of all members of the National Association of State Purchasing Officials (NASPO) by The Council of State Governments. NASPO is an affiliate of the Council, with the Council serving as the secretariat for the Association. Results of these surveys are shown as individual responses by the states.

The other two surveys were conducted of a cross-section of local governments by the National Institute of Governmental Purchasing, Inc. whose headquarters are in Arlington, Virginia. The various types of jurisidictions represented by responses to both of these surveys include cities, counties, city/county combined units of government, towns and municipalities, authorities and commissions, public education bodies, and Canadian government entities. Results of these two surveys are given in the form of percentages, in connection with which it should be noted that where a question elicits or permits more than a single answer or where all jurisidictions did not respond to a question, the percentages shown may total more or less than 100.

In addition to the stand-alone information they provide, the surveys can be used for illustration and better understanding of much of the text of the book. Questions included in the surveys relate directly to the subject matter and discussion in each of the 16 chapters. Legal references to a wide assortment of problems that arise in the field of public purchasing are listed as citations of opinions rendered by state attorneys general and citations of case law. The opinions of the attorneys general were compiled and classified incident to development of the initial publication of *State and Local Government Purchasing* in 1975. These are not updated in this edition; work is currently underway, however, to bring the listing up to date, and this information may be available from the National Association of Attorneys General or The Council of State Governments.

Citations of case law incorporate efforts to identify them as recently as April 1982. While not necessarily complete, the listing represents much of the reference material currently indexed.

The sections of bibliography and glossary are largely self-explanatory. Included in the bibliography are a number of unpublished papers which offer significant discussion and viewpoint, but are not easily obtainable. The Council of State Governments is endeavoring to collect copies of these and to make them available to others.

The breadth of subject matter covered by some of the bibliographic material is such that a reference may be listed under more than one topic heading.

The glossary contains selected terms and definitions as they relate to state and local government purchasing, and which in many cases differ from those given in standard, general-purpose dictionaries. The selected definitions are intended to bring more uniformity in understanding and usage by public purchasing practioners. Thus, practical rather than legally or literally perfect definitions are included.

Central purchasing offices are encouraged to incorporate a list of public purchasing terms in their purchasing manuals. Like other specialists, public purchasers tend to use jargon which they think of as "technical terminology" but others may define as a "a strange, barbarous dialect," or worse, as an "obscure and often pretentious language."

APPENDIX A-1

Survey of Selected Procurement Practices of State Governments

National Association of State Purchasing Officials

November 1979; updated August 1981

A survey of selected purchasing practices of the 50 state governments conducted in July, 1979 by the Council of State Governments for the Congressional Research Service, The Library of Congress, at the request of the Subcommittee on Governmental Activities and Transportation, Committee on Government Operations, U.S. House of Representatives.

The survey was updated by a series of contacts with the states between August, 1981 and February, 1982.

Q1. Does the State have a central purchasing office which buys or contracts for the requirements of most or all State agencies?

Q2. Are any agencies exempt by law from purchasing through the central purchasing office, or otherwise authorized to buy most of their requirements?

Q3. If yes, please list those agencies.

	Q1		Q2		Q3*
	YES	NO	YES	NO	
AL	x		x		Mental Health; State docks; Youth services.
AK	x		x		University; Legislature.
AZ	x		x		Corrections; State Compensation Fund; Education; Economic Security, Game and Fish Dept.; Health Services; Military Affairs (National Guard); Public Safety; Transportation; Universities. Correctional Industries, Lottery Commission, Drug Control District.
AR	x		x		Colleges and universities; Highway Dept.; Constitutional offices.
CA	x		x		University of California; State Compensation Insurance Fund.
CO	x		x		Division of Purchasing issues mandatory contracts for all agencies.
CT	x		x		Legislature; Judicial branches.
DE	x		x		State institutions and education; Only Executive Branch must go through central purchasing.
FL	x		x		Legislative; Judicial and State University System
GA	x		x		Legislatures and State courts.
HI	x		x		Not mandatory for any agency to buy through central purchasing. (They do use price lists issued by central purchasing.)
ID	x		x		Elected officials; University of Idaho.
IL	x		x		State colleges and universities.
IN	x		x		Judicial and legislative branches; Universities; Commission on Higher Education.
IA	x		x		Department of Transportation; Board of Regents.
KS	x		x		Legislatures

* Some States listed items and construction which were excluded by definition; these have been corrected accordingly.

KY	x		x	Issues major delegations of authority to Transportation and universities.
LA	x		x	Transportation and Development; Education; (Both use state contracts when applicable.)
ME	x		x	University system; Legislature; Court system.
MD	x		x	University of Maryland (except capital funded) Judicial and Legislative Branches.
MA	x		x	State and community colleges; Superintendent of Buildings; Elected officials; Port, Turnpike, Bay Transportation Authorities; Housing Finance Agency. Though they have authority to purchase on their own, there are many instances where they purchase from the state's annual contracts and where they send requisitions for spot bids.
MI	x		x	Liquor-Control Commission, State Lottery, Auditor General
MN	x		x	University of Minnesota; Legislature
MS		x		
MO	x		x	Highway Dept. (except outside printing), Judicial branch and legislature; University of Missouri.
MT	x		x	
NE	x		x	University.
NV	x		x	Legislature and Supreme Court.
NH	x		x	Supreme and Superior Courts; University.
NJ	x		x	Judicial and legislative branches; Quasi-state agencies
NM	x		x	Judicial and legislative branches; Educational institutions; State Fair Commission; Intertribal Indian Ceremonial Association.
NY	x		x	Legislature; Public benefit corporations; Authorities; Commissions.
NC	x		x	
ND	x		x	Institutions of higher education, the Judicial and legislative branches.
OH	x		x	Adjutant General's Office; General Assembly; Institutions operated by Board of Trustees; Colleges and universities; Transportation (State contracts may be used by these agencies at their discretion.)
OK	x		x	University system; Legislature.
OR	x		x	

PA	x		x	
RI	x	x		Port Authority; Public Transit Authority; State Lottery; Legislative Branch; Public Building Authority.
SC	x	x		Port Authority; Railway Commission; Public Services Authority; Legislature; Highway Department--Roads and Bridges.
SD	x		x	(State Cement Plant)
TN	x	x		Universities and colleges; Legislature; Technical institutes. (Exception to the exemption: when the purchasing division executes term contracts for an amount less than the commodities can be bought by the above group.)
TX	x		x	
UT	x	x		Legislature
VT	x		x	
VA	x	x		Highways and Transportation; Alcoholic Beverage Control Board (Exemptions do not include purchases of office and janitorial materials or heating fuels.)
WA	x	x		Legislature; Higher education; Date Processing Authority.
WV	x		x	Legislative and Judicial
WI	x		x	
WY	x	x		Highways; Universities; Legislature and Judicial branches.

Q4. Are purchase orders (or releases under contracts) to vendors issued primarily by the user agencies or by the central purchasing office?

Q5. Do almost all of your purchases consist of commercially available items that also are sold to other customers and the public at large?

Q6. What are the significant exceptions, if any?

STATE	Q4		Q5		Q6
	AGENCIES	PURCHASING OFFICE	YES	NO	
AL		x	x		Some paints; Some specially designed trailers.
AK		x	x		
AZ	x		x		
AR	x		x		
CA	x		x		Specialty equipment custom manufactured for unique agency needs, e.g. rotary snowplows, highway stripers, special push bumpers.
CO		x	x		Only if something must be constructed.
CT	x		x		License plates; Bituminous concrete materials; Lottery tickets.
DE	x		x		
FL	x		x		
GA	x		x		Custom patrol boats; Experimental models for research.
HI	x		x		Some office furniture is specifically manufactured from Hawaii designs.
ID		x	x		
IL		x	x		State police uniforms; License plates; Game bird feeds.
IN		x	x		
IA		x	x		Raw materials for State industries
KS	x		x		
KY	x		x		
LA	x		x		
ME		x	x		
MD	x		x		Commodities produced by prison industries, blind industries and services, sheltered workshops for handicapped and custom fabricated equipment.
MA	x		x		
MI		x	x		Items bought from Prison Industries by law.
MN	x		x		Products manufactured to state specifications, e.g., uniforms, some soaps.
MS	x		x		
MO		x	x		
MT		x	x		
NE		x	x		

STATE	Q4		Q5		Q6
	AGENCIES	PURCHASING OFFICE	YES	NO	
NV		x	x		
NH		x	x		
NJ	x		x		State specifications for specialized and/or unique products suited to State's needs including some paints, clothing textiles, equipment, furniture, etc.
NM		x	x		
NY	x		x		
NC	x		x		
ND	x		x		
OH		x	x		Items manufactured by OPI (Prison Industries) and Ohio Handicapped Schools and purchased by law without competitive bidding.
OK		x	x		
OR	x		x		Highway marking paint.
PA		x	x		
RI		x	x		Uniforms and institutional clothing.
SC	x		x		
SD	x		x		Highway marking paint.
TN		x	x		
TX		x	x		Paint
UT		x	x		
VT		x	x		
VA	x		x		Certain size cabinets; some draperies.
WA		x	x		
WV	x		x		
WI	x		x		
WY		x	x		

Q7. Is there a requirement in the State's purchasing law for sealed bids, publicly opened?

Q8. Above what dollar amount are you required to use sealed bids?

Q9. Below this amount, do your small purchase procedures usually require competitive quotations?

Q10. What is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?

Q11. Can State agencies obtain quotations for local purchase of items or types of items that are available under a contract issued by the central purchase office?

Q12. Does your State authorize or permit the purchase of equipment, materials or supplies by negotiation, apart from sole source, emergencies, or very small purchases? (Q13 calls for support information and is not tabulated here.)

	Q7		Q8	Q9		Q10	Q11		Q12	
	YES	NO		YES	NO		YES	NO	YES	NO
AL	x		2,000	x		100		x		x
AK	x		2,500	x		300	x		x	
AZ	x		5,000	x		(7)		x		x
AR	x		2,000	x		2,000		x		x
CA	x		5,000	x		100		x		x
CO	x		1,000	x		100		x	x	
CT	x		4,000	x		200		x		x
DE	x		2,000		x	2,000	x		x	
FL	x		2,500	x		2,500		x	x	
GA	x		5,000	x		1500(6)		x		x
HI	x		4,000		x	(1)		x		x
ID	x		5,000	x		150(2)	x		x	
IL	x		2,500	x		300		x		x
IN	x		500	x		50	x			x
IA	x		5,000	x		300		x		x
KS	x		2,000	x		2,000		x		x
KY	x		1,000	x		1,000		x	x	
LA	x		5,000	x		10,000		x		x
ME	x		2,500	x		100		x		x
MD	x		7,500	x		500		x	x	
MA	x		500		x	500	x			x
MI		x	4,000*	x		400		x		x
MN	x		5,000	x		300		x		x
MS	x		1,500	x		100		x		x
MO	x		2,000	x		500		x		x
MT	x		2,000	x		300		x		x
NE	x		5,000	x		35		x	x	
NV	x		2,500	x		500		x		x
NH		x	1,000*	x(3)		100	x			x
NJ	x		2,500	x		1,500		x		x
NM	x		2,500	x		250		x		x
NY	x		5,000	x		2,500		x		x
NC	x		5,000	x		2,500		x	x	
ND	x		2,000*	x		300		x		x
OH	x		400		x	400		x		x

	Q7		Q8	Q9		Q10	Q11		Q12	
	YES	NO		YES	NO		YES	NO	YES	NO
OK	x		500		x	500		x		x
OR	x		10,000	x		500		x		x
PA	x		300	x		300		x		x
RI		x	*(4)	x		50		x		x
SC	x		2,500*	x		2,500		x	x	
SD	x		1,500	x		500		x	x	
TN	x		2,000	x		200		x		x
TX	x		(5)	x		500		x		x
UT	x		8,000	x		500		x		x
VT		x	2,500*	x		100		x	x	
VA		x	2,500*	x		500		x		x
WA	x		2,500	x		300		x		x
WV	x		2,000	x		1,000		x		x
WI	x		10 000	x		3,000		x	x	
WY	x		1,500	x		1,000		x	x	

*Even though there is no legal requirement, by policy above this amount sealed bids are used.

(1) Agencies are not mandated to buy them through Central Purchasing. (2) No bidding requirements; some agencies given authority of $1,000, $2,500 or $5,000 of which certain requirements have to be met, including monthly reports. (3) At buyers' discretion. (4) All solicitations. (5) No specified amount. (6) Four major universities up to $5,000. (7) Agencies listed in Q3 have same purchase authority as state purchasing office, all other agencies and boards can go up to $500.

Q14. What are the statutory criteria for evaluating bids and awarding contracts? Please quote from the relevant statutory provision(s) and provide a complete citation.

ALABAMA: "...award shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery."
Title 41-16-32

ALASKA: "A contract...must be based on competitive bids; an award shall be made to the lowest responsible bidder after advertising for bids, except that...a bid shall be awarded to an Alaska bidder if his bid is not more than five percent higher than the lowest nonresident bidder's;"
Alaska Statutes Sec. 37.05.230(1)

ARIZONA: "Awards shall be made with reasonable promptness by giving written notice to the responsible bidder whose bid conforms to the invitation and will be the most advantageous to the state with respect to price, conformity to the specification and other factors."
ARS 41-730

ARKANSAS: "The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids..."
H.B 1002 - ACT No. 482 (1979 Arkansas General Assembly Section 29)

CALIFORNIA: Award of contracts: (a) contracts and purchases will be made or entered into with the lowest responsible bidder meeting specification, except as otherwise specified in the Invitation. Bid General Provisions #9.

COLORADO: "All orders awarded or contracts made by the state purchasing agent shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied their conformity with the specifications, the purposes for which they are required, and the date of delivery."
Colorado 24-103-202

CONNECTICUT: "Award will be made to the lowest responsible qualified bidder. The quality of articles to be supplied, their conformity with the specifications, their suitability to the requirements of the state, and the delivery terms will be taken into consideration in making the award "
Standard Bid and Contract Terms and Conditions, para. 22

DELAWARE: ". .shall be awarded...in accordance with regulations prescribed by the agency, to the lowest responsible vendor unless, in the opinion of the agency or its

delegated representative, the interest of the State shall be better served by the awarding of the contract to some other vendor, which may then be done, provided the agency shall set down in its minutes the reason or reasons for granting the contract to he person other than the lowest responsible vendor, and clearly describing how the interest of the State shall be better served by awarding the contract to other than the lowest vendor."
(29 Del. C. 1953, ss6908; 54 Del. Laws, c. 106, ss2; 55 Del. Laws, c. 187, ss4; 57 Del. Laws, c.454, ss10.)

FLORIDA: Law: None
Regulations: 13A-1.02(9) - "Determination of Best Bid - It shall be the responsibility of the agency to determine the lowest responsive bidder meeting specifications and conditions of a bid invitation. In any case where an agency makes a determination to award to a bid other than the low bid meeting specifications, it shall first submit to the Division of Purchasing its complete file containing all information available to that agency, including reasons for recommending a bid other than the low bid."

GEORGIA: "...shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purposes for which said articles are required, the discount allowed for prompt payment, the transportation charges and the date or dates of delivery specified in the bid."
GA Laws 1937 pp. 503, 508; 1939, pp. 160, 165 (Ga Code Ann. ss40-1910)

HAWAII: "all contracts...shall be made with the lowest responsible bidder..."
Section 103-32, Hawaii Revised Statutes.

IDAHO: "Lowest Responsible Bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price."
IC 67-5716.

ILLINOIS: "All purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications terms of delivery quality and serviceability..."
Chapter 120, para. 132.1, Section 6 a, Illinois Revised Statutes.

INDIANA: "...all contracts for construction or repairs and all purchases of and all contracts for, supplies, materials, purchase or rental equipment, and contractual services

covered by this act shall be based on competitive bids, and all awards shall be to the lowest and best bidder after advertising for bids as herein provided."
BURNS INDIANA STATUTES ANNOTATED, Title 4, Article 13, Chapter 2, Section 11 (4-13-2-11)

IOWA: "...Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price."
Code of Iowa, 1979 edition, Section 18.6, pp. 72-73

KANSAS: "...shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids."
KSA 75-3740(a)

KENTUCKY: "The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price."
KENTUCKY MODEL PROCUREMENT CODE 45A.080(5)

LOUISIANA: "Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding, pursuant to R.S. 39:1594, except as provided in R.S. 39:1595 through R.S. 39:1598." R.S. 39:1593

MAINE: "Except as otherwise provided by law, orders awarded or contracts made shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the services, supplies and materials..."
Maine R.S. 5-1816 (7)

MARYLAND: The Department shall make awards on the basis of competitive sealed bidding. "Lowest bid price or the lowest evaluated bid price, whichever is applicable."

MASSACHUSETTS: "No criteria defined or set forth."

MICHIGAN: "Lowest responsible bidder meeting specifications"
-Policy

MINNESOTA: "All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids "
MINNESOTA STATUTES 16.08

MISSISSIPPI: "Awards shall be made to the lowest and/or best bid meeting all requirements of the specification."
Chapter 7, "Public Purchasing Section 31-7-47
Regulation 6 - Purchasing Division Regulation

MISSOURI:	"The contract shall be let to the lowest and best bidder" MISSOURI REVISED STATUTES 1969 Section 34.040
MONTANA:	"In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance." MONTANA CODE ANNOTATED, 1978, Title 18, Chapter 1, Part 1; 18-1-102
NEBRASKA:	"(award)...shall be made to the lowest responsible bidder, taking into consideration the best interest of the state, the quality or performance of the articles or property proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery." NEBRASKA REVISED STATUTES 81-161
NEVADA:	"Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: (1) The location of the using agency to be supplied; (2) The qualities of the articles to be supplied; (3) Their conformity with the specifications; (4) The purposes for which they are required; (5) The dates of delivery." NEVADA R.S. 333.340 pp.10848-10849
NEW HAMPSHIRE:	None
NEW JERSEY:	"...award shall be made...to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." NEW JERSEY STATUTES ANNOTATED 52:34-12
NEW MEXICO:	"Awards for all material and services are awarded based on the lowest responsible bid meeting the minimum specifications and delivery requirements."
NEW YORK:	"Contracts...shall be let to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery..." N.Y.S. Finance Law, Article XI, Section 174
NORTH CAROLINA:	"...acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the article offered; the general

reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use, the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question which if controlling shall be made a matter of record."
GS 143-52, pp. 2-3 Public Laws Relating to the North Carolina Purchase & Contract Division

NORTH DAKOTA: "...purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability."
SB 2048 Section 5

OHIO: "Contracts shall be awarded to the lowest and best bidder on each item and the Dept. of Administrative Services may accept or reject any or all bids in whole or by item."
Ohio Revised Code Section 125.11

OKLAHOMA: "Award shall be made to the lowest and best bidder..."
Oklahoma State Purchasing Act, Section 85.5

OREGON: "...shall award the contract to the lowest responsible bidder."
ORS 279.029

PENNSYLVANIA: "...award the contracts to the lowest responsible bidder.. "
The Administrative Code of 1929 of the Commonwealth of Pennsylvania, as amended, Section 2409

RHODE ISLAND: "Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery."
State of Rhode Island Division of Purchases, General Specification for all quotations amd contracts, paragraph 25, Title: Award

SOUTH CAROLINA: The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. . . (IFB)
Section 11-35-1529(10)
Award shall be made to the responsive offeror whose proposal is determined in writing to be most advantageous to the State, taking into consideration price and evaluation factors set forth in the proposal. (RFP)
Section 11-24-1530(7)

SOUTH DAKOTA: "In determining the successful bidder, the lowest or most advantageous price upon grade, quality, or quantity and

general conditions specified, shall be the determining factors."
S.D. Code 5-23-11.1

TENNESSEE: "...shall be awarded...to the lowest qualified and responsible bidder, taking into consideration among other things the apparent ability of the bidder to perform the proposed contract, the quality of the articles to be supplied and conformity with the standard specifications, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the invitation to bidders."
TENNESSEE CODE ANNOTATED, Sections 12-3-110 and 12-3-116

TEXAS: "The Board shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required by the Board."
Article 664-3, V.C.S., Section 8(e)

UTAH: "Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made."
Utah 63-56-21

VERMONT: "...shall be awarded to the person whose bid or quotation is in the best interest of the state...in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supplies (4) incidental administrative costs (5) proven reliability of bidder"
Requisition for supplies and materials (T. 29, Sec.903)

VIRGINIA: "...the contract shall be let to the lowest responsible bidder, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery provided however that whenever the Division has reason to believe that the low bid is not the best price, it shall have authority to enter into further negotiations with the apparent low bidder to the end that the price paid shall be the best price obtainable."
Code of Virginia 2.1-442

WASHINGTON: "...the contract shall be let to the lowest responsible bidder...In determining "lowest responsible bidder," in addition to price, the following elements shall be given consideration: (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required; (2) The character, integrity, reputation, judgement, experience and efficiency of the bidder; (3) Whether the bidder can perform the contract within the

time specified; (4) The quality of performance of previous contracts or services; (5) The previous and existing compliance by the bidder with laws relating to the contract or services; (6) Such other information as may be secured having a bearing on the decision to award the contract."
1965 c 8 ss 43.19.1911

WEST VIRGINIA: "...shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government and the delivery terms."
W. Va. Code ss 5A-3-14 (1972)

WISCONSIN: "All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in subs. (2) (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers."
Subchapter IV, Section 16.75-1

WYOMING: ".. award shall be made on the basis of lowest evaluated price..."
WS 9-3-2021

Q15. Do you use the same types of specifications and purchase descriptions (that is, design, performance, brand name or equal, qualified products lists) to purchase items under both definite quantity and indefinite quantity contracts, including multiple award?

Q16. If no, what are the exceptions or differences?

Q17. In general, over the last five years has the State's use of the following types of specifications or purchase descriptions increased decreased, or stayed about the same?

	Q15		Q17													
			DETAILED, DESIGN SPECIFICATIONS			PERFORMANCE FUNCTIONAL SPECIFICATIONS			BRAND NAME OR EQUAL SPECIFICATIONS			QUALIFIED PRODUCTS LISTS		
	YES	NO	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME
AL	x			x				x	x			x		
AK	x		x			x					x			x
AZ	x				x	x			x					x
AR	x			x		x			x			x		
CA	x			x		x					x	x		
CO	x				x	x					x	x		
CT	x		x			x					x	x		
DE	x				x			x			x			x
FL	x				x	x					x			x
GA	x		x			x				x		x		
HI	x			x		x					x			x
ID	x			x		x					x		x	
IL	x			x			x				x		x	
IN	x		x					x	x			(2)		
IA	x				x	x					x	x		
KS	x					x			x				x	
KY	x				x	x					x			x
LA	x		x(1)			x			x			x		
ME	x				x			x	x			x		
MD	x		x			x			x					x
MA	x		x					x			x	x		
MI	x			x		x					x		x	
MN	x				x			x			x			x
MS	x				x	x					x			x
MO	x			x		x				x		x		
MT	x		x			x				x				x
NE	x			x		x			x			x		
NV	x			x				x	x			x		
NH	x		x			x					x			x
NJ	x		x			x				x			x	

	Q15		Q17												
			DETAILED, DESIGN SPECIFICATIONS			PERFORMANCE FUNCTIONAL SPECIFICATIONS			BRAND NAME OR EQUAL SPECIFICATIONS			QUALIFIED PRODUCTS LISTS		
	YES	NO	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME
NM	x		x			x				x			x	
NY	x			x			x			x		x		
NC	x			x		x					x	x		
ND	x				x	x					x			x
OH	x		x			x			x			x		
OK	x			x		x					x			x
OR	x			x		x					x			x
PA	x				x		x				x	x		
RI	x		x			x					x	x		
SC	x				x	x			x				x	
SD	x				x	x				x				x
TN	x			x		x				x		x		
TX	x				x	x					x			x
UT	x		x			x			x				x	
VT	x		x			x			x			x		
VA	x				x			x			x	x		
WA	x			x		x					x	x		
WV	x			x		x				x			x	
WI	x			x		x					x	x		
WY	x			x		x				x			x	

(1)Answer to Q16: Multiple award contracts are sometimes issued for a brand name only. (2)Does not use Qualified Products Lists.

Q18. Does the State award contracts on the basis of a discount offered without consideration of the net price?

Q19. If yes, how frequently does this happen?

Q20. If yes, under what circumstances do you award contracts on the basis of discount only, without evaluating net price?

	Q18		Q19			Q20
	YES	NO	OFTEN	SOME-TIMES	RARELY	
AL	x			x		Posted prices for such items as gasoline; since most major suppliers have the same posted prices, a definite amount is bid posted price.
AK	x				x	Limited competition, vendor preference; indefinite quantity.
AZ		x				
AR	x			x		On commodities that have price catalogs that are identical (i.e., automotive parts, farm machinery parts, and other related items) where the price lists are distributed by the manufacturer to all dealers and distributors.(1)
CA		x				
CO		x				
CT	x			x		Sole source equipment contracts; multiple awards, agency choice type contracts.
DE		x				
FL		x				
GA		x				
HI		x				An exception is small lamps, discounts solicited from national catalog prices.
ID	x				x	Price agreements.
IL		x				
IN		x				
IA		x				Attempt to compare vendor catalog prices of most commonly used items to insure discounts give reasonable prices, but items are so numerous and catalog prices change so frequently it is nearly impossible to verify low net price on every item on contract.(2)
KS		x				
KY		x				Purchase under GSA contracts; however, in most cases, the net cost is considered under GSA compared to what the product can

	Q18		Q19			Q20
	YES	NO	OFTEN	SOME-TIMES	RARELY	
						be obtained for by competitive, open market bid. If it is determined that the GSA pricing is as good or better than can be acquired by bid, contract is accepted; if not, the requirement is placed on bid. Utilization of GSA contracts are optional.
LA	x			x		Discount against a certain price list on multiple award contracts (medical field only).
ME		x				If discount is within a reasonable time frame; as long as discount can be taken advantage of within reason.(3)
MD		x				
MA		x				
MI		x				
MN		x				
MS		x				
MO		x				An exception is small lamps, discounts solicited from national catalog prices.
MT	x				x	When more than one pre-established price list or catalog has been specified within the Request for Quotation as minimum acceptable quality
NE		x				
NV		x				
NH		x				
NJ		x				
NM		x				
NY		x				
NC		x				
ND		x				
OH	x				x	Discount on Federal price list and few other items, such as valves, etc.
OK	x				x	When there are limited numbers of manufacturers and each (2 or 3) has unique equipment such as mailing equipment.
OR		x				
PA	x				x	Multiple award contracts using discount from price lists or GSA schedules.
RI		x				
SC		x				
SD		x				
TN		x				
TX		x				
UT		x				

	Q18		Q19			Q20
	YES	NO	OFTEN	SOME-TIMES	RARELY	
VT		x				
VA		x				
WA		x				When we contract in areas such as electrical, plumbing, lamps or hardware supplies, etc., instead of listing each type or kind we ask vendors to submit their catalogs with discount off dealer prices.(2)
WV		x				
WI		x				
WY		x				

(1) Where price lists are the same, computation of net prices not needed to determine low bid. (2) Follow-up indicates net prices computed and compared on sampling of items to determine low bid. (3) Respondent interpreted question to mean cash discount for prompt payment rather than trade discount from price list.

Q21. Do your invitations for bids for indefinite quantity contracts specify approximate or estimated quantities expected to be purchased?

Q22. If yes, approximately how many invitations for bids indicate estimated quantities?

Q23. Compared to five years ago, is your State taking into account the cost of supplies, energy, parts, warranties, maintenance, or other costs of owning and operating the product in determining the low bidder more frequently, about the same, or less frequently?

Q24. Do some contracts awarded to manufacturers or distributors provide that sales and services will be rendered through local dealers?

	Q21		Q22			Q23			Q24	
	YES	NO	MOST	SOME	FEW	MORE FREQUENTLY	ABOUT SAME	LESS FREQUENTLY	YES	NO
AL	x		x			x			x	
AK	x			x		x			x	
AZ	x		x			x			x	
AR	x			x		x			x	
CA		x				x			x	
CO	x		x			x			x	
CT	x		x			x			x	
DE	x		x			x				x
FL	x			x		x			x	
GA	x		x			x			x	
HI	x		x			x			x	
ID	x		x			x			x*	
IL	x		x				x		x	
IN	x		x			x				x
IA	x		x			x			x	
KS	x		x			x			x	
KY	x		x			x			x	
LA	x		x			x			x	
ME	x			x		x				x
MD	x		x			x			x	
MA	x		x			x			x	
MI	x		x			x			x	
MN	x		x			x			x	
MS		x				x			x	
MO	x		x			x			x	
MT	x			x		x			x	
NE	x		x			x			x	
NV	x		x			x			x	
NH	x			x			x		x	
NJ	x		x			x			x	
NM	x		x				x		x	
NY	x		x			x			x	
NC	x				x	x			x	
ND	x		x			x			x	
OH	x		x			x			x	
OK	x			x		x			x	
OR	x		x			x			x	
PA	x		x			x			x	
RI	x			x			x			x

	Q21		Q22			Q23			Q24	
	YES	NO	MOST	SOME	FEW	MORE FREQUENTLY	ABOUT SAME	LESS FREQUENTLY	YES	NO
SC	x		x			x			x	
SD	x		x			x			x	
TN	x		x			x			x	
TX	x		x			x			x	
UT	x		x			x			x	
VT	x		x			x				x
VA	x		x			x			x	
WA	x		x			x			x	
WV	x		x			x			x	
WI	x		x			x			x	
WY	x		x			x			x	

*Response time now a consideration.

Q25. Does the State maintain bidders' lists by geographic area, or otherwise make purchases according to geographic areas or regions?

Q26. Does your State allow a pricing preference for products manufactured or to bidders located in the State?

Q27. If yes, what is the percentage preference?

Q28. Does your State use any formal or informal method of rotating vendors?

Q29. If yes, is this done as a common or infrequent practice?

	Q25		Q26		Q27	Q28		Q29	
	YES	NO	YES	NO		YES	NO	COMMON PRACTICE	INFREQUENT PRACTICE
AL	x			x			x		
AK	x		x		5%		x		
AZ	x			x(1)			x		
AR	x		x		5%, 15%(8)		x		
CA	x			x(2)		x			
CO	x			x			x		x
CT		x		x(3)			x		
DE	x			x			x		
FL	x			x			x		
GA	x			x		x		x	
HI	x		x		3% 5%, 10%		x		
ID	x			x(4)		x		x	
IL	x			x		x		x	
IN	x			x		x		x	
IA		x		x(2)(7)			x		
KS	x			x(2)(5)			x		
KY		x		x		x			x
LA	x		x		5%		x		
ME		x	x		2%		x		
MD		x		x		x			x
MA	x			x(5)		x		x	
MI	x			x				x	
MN	x			x(1)			x		
MS		x		x(6)			x		
MO	x			x(2)		x		x	
MT		x	x		3%		x		
NE		x		x			x		
NV	x			x(3)			x		
NH		x		x			x		
NJ	x			x			x		
NM		x	x		5%		x		
NY		x(8)		x			x		
NC		x		x			x		
ND		x		x(6)			x		
OH	x			x			x		
OK	x		x		3%	x		x	
OR		x		x			x		
PA	x			x			x		
RI		x		x			x		
SC	x		x		2%(9)		x		
SD	x			x			x		

	Q25		Q26		Q27	Q28		Q29	
	YES	NO	YES	NO		YES	NO	COMMON PRACTICE	INFREQUENT PRACTICE
TN	x			x			x		
TX	x			x			x		
UT		x		x			x		
VT		x		x			x		
VA	x			x(2)		x		(6)	
WA	x			x			x		
WV	x		x		2%	x		x	
WI		x		x(2)		x			x
WY		x	x		5%		x		

(1) A 5% preference for small business.
(2) Resolve tie bids in favor of in-state suppliers
(3) In-state printing is given a 10% preference, and there is a policy for giving up to 25% above fair market value for State Vocational Rehabilitation Workshops.
(4) A 5% preference for labor distressed areas.
(5) Reciprocal provision which applies against products and bidders from States with in-state pricing preference.
(6) Vendor Rotation started 7/1/79. Cannot determine frequency at this time.
(7) Buy American for vehicles where life cycle cost is comparable to foreign manufactured.
(8) In a few instances, awards are made on geographic areas.
(9) Under $2,500 2%, over 1%. Resident qualifications required.

Q30. What are the one or two most effective methods you have used to attract bids from a larger number of potential suppliers?

AL: The use of annual and quarterly contracts, meaning larger volumes, especially when the counties and cities participate.

AK: Newspaper advertisements, Recirculation of bidder's application, Pre-bid conferences; Use of RFP's.

AZ: Non-restrictive registration of all bidders; Mailing of bids to all vendors registered;assuring vendors of prompt payment of invoices thru clearing acount or other updated payment.

AR: Case of registration of all bidders; mailing of bids to all vendors registered; newspaper advertisement of bids.

CA: Making phone calls or writing letters to additional possible vendors and to prior vendors who fail to bid on a recent bid; Seeking reasons why vendors do not bid; Assure that specifications allow maximum competition; Make sure specifications reflect only actual needs and do not represent barriers to prospective vendors; Add vendors referred by using agencies to bid list.

CO: Fair and open specifications; good vendor lists.

CT: Thomas Register.

DE: Advertisement in trade publications.

FL: Structured bids to be bid by district rather than statewide; Utilize trade publications, Thomas Register, telephone directory and data processing to maximum; Bid solicitations to all known sources of supply.

GA: Computerized listing of vendors by commodities using the Standard Industrial Classification Code for Commodities.

HI: Notify potential bidders of current solicitations.

ID: Pre-survey of vendors.

IL: Advertisement in official State newspaper as required by law, Suggested sources from user agencies.

IN: Sending Invitations to Bid; Personal contact between buyers and vendors; Posting Invitations to Bid on a bulletin board in the central purchasing office; Advertising for bids in a commercial newspaper.

IA: Advertisement in national publications, such as Wall Street Journal use trade associations to publicize upcoming purchases.

KS: Use of seasonal contracting for such items as road aggregate, antifreeze, canned goods, air conditioners and lawn mowers; Use of agency assistance in developing local sources of supply; Advertisement of bids.

KY: Inform representatives of manufacturers and distributors of Ky. system of equal opportunity for all potential suppliers and an open purchasing approach.

LA: No pre-qualification of vendors; Automated bidder selection from computerized bid list based on commodity classes.

ME: Pre-bidding conferences.

MD: Conduct regional (within state) "Outreach" seminars to explain to potential bidders how to sell commodities to the State.

MA: Close communication with industry and potential vendors; Publicly let it be known what is available to be bid on, how simple it is to do business with the State and keep vendors well-informed by answering all questions; Even seeking to increase the number of vendors and stimulating their interest.

MI: Use of competitive specifications.

MN: Buyer's attendance at trade shows, e.g., purchasing management annual product show; Maintain a reputation for considerate and fair treatment of all participating bidders.

MS: A constant attempt to gain the vendor confidence in public purchasing to make him well aware that everyone has same opportunity to receive the award, providing all aspects of specifications are complied with; Keep in close contact with vendors and determine if any problems are being encountered such as unreasonable requests and demands on the part of the buying agency; Prompt payment of bills.

MO: Professional staff constantly seeks new vendors to be added to bidders' list. Elimination of unnecessary restrictive specifications and maintain an open and fair competitive bidding system.

MT: Through published legal advertising; Agency contract resulting in suggested sources of supply.

NE: Thomas Register -- Phone Books

NV: Prompt payment of invoices; Offering the vendors a single source of information; All transactions including payment are handled from central purchasing office, eliminating need for vendor to search out where to obtain payment or other information.

NH: Use of Thomas Register and Sweets Catalog; Urge requisitions to include names of potential suppliers.

NJ: Elimination of bid deposits on approximately 95% of purchases; Elimination of performance bonds on purchases less than $10,000, and for those in excess of $10,000 where in opinion of Director elimination does not constitute a risk to the State; Establishment of "Business Specialist" position responsible for locating new sources of supply and resolving vendor complaints.

NM: On informal bid and formal bids all registered vendors or recommended sources (by the agency) will receive Invitations to Bid; Advertising formal bids through major newspapers, On quotes, buyer will choose five vendors; Method varies with the buyer, but quotations usually sent to vendors that respond or are located near the destination of the product.

NY: Trade publications, national registers, e.g., Thomas Register; Ask other State agencies for names of potential sources of supply, Obtain

information from other States, cities and Federal government.

NC: Use of performance specification in lieu of design type; Utilizing two- and three-step bidding processes, particularly in the area of computer systems.

ND: Thomas Register; trade publications; state directories; pre-bid conferences.

OH: Design bid specification in such a way that the qualitative standard fulfills requirements of State agency(s) without addition of any production or engineering activities by vendors; Explore market conditions in terms of availability to enhance competition; Research for new vendors; Increment in the volume purchase and term contracts.

OK: Definite quantities; Single lowest and best award.

OR: Pre-bid conferences to develop specifications and bid conditions.

PA: Use specificatioons that are open and not restrictive.

RI: Public advertisement (e.g., local newspaper); Commercial journal and trade publications (e.g. Dodge Reports).

SC: Eliminate as many restrictive conditions as possible such as installed, inside delivery, set in place, multiple delivery locations, etc.; Use of open bidders' list; Do not prequalify vendors, and accept all applicants; Bids mailed to all vendors who indicate desire to bid specific classes or subclasses of a commodity.

SD: Direct contact by the purchasing office to the vendors.

TN: Call prospective bidders to discuss their potentiality prior to mailing invitations, Pre-bid conferences; Bidder questionaires mailed to potential suppliers.

TX: Use of competitive specifications; Fair and consistent bid evaluation with award made to low bidder meeting all specification requirements and terms and conditions of the Invitation to Bid.

UT: Newspaper ads. Using agency to include potential suppliers. Names on requisitions.

VT: Quantity.

VA: State-wide contracts.

WA: Pre-bid conferences; Seminars or public-purchasing committee meetings.

WV: Combined requirements for one large purchase (this seems to generate more interest from vendors).

WI: "Reverse marketing" i.e , selling prospective bidders on doing business with the State, Clear, precise, and brief invitations to bid; Industry-wide meetings soliciting vendor input; Active pursuit of prior bidders who have stopped bidding or responding to bids.

WY: Vendor meetings making the operation more visible; Vendor review and input to specifications prior to bid, e.g., paint, lamps, tires,typewriters.

Q31. Do you reject all bids if the prices offered appear to be too high?
Q32. If yes, following such a rejection, are new bids usually called for?
Q33. If yes, can the purchase be negotiated in the open market at a lower price?

Q34. Does your State have a product testing program or use product testing procedures?

Q35. Do you evaluate products for award in the same way when purchasing under definite quantity and indefinite quantity contracts, including multiple award?
Q36. If no, what are the main differences? (See footnotes next page for response.)

Q37. Do the State's indefinite quantity contracts specify a maximum quantity for a single order, above which purchase under the contract is not permitted?
Q38. If yes, approximately how many indefinite quantity contracts specify a maximum order quantity?

STATE	Q31		Q32		Q33		Q34		Q35		Q37		Q38		
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	MOST	SOME	FEW
AL	x		x		x		x		x			x			
AK	x		x		x		x		x			x			
AZ	x		x			x		x	x			x			
AR	x		x			x		x	x		x			x	
CA	x		x			x	x			x(1)	x		x		
CO	x		x			x		x	x			x			
CT	x		x		x		x		x			x			
DE	x		x			x		x	x			x			
FL	x		x			x	x		x			x			
GA	x		x		x		x		x			x			
HI	x		x			x		x	x			x			
ID	x		x		x		x		x			x			
IL	x		x			x	x		x			x			
IN	x		x			x	x		x			x			
IA	x		x		x			x(3)	x			x			
KS	x		x			x		x	x			x			
KY	x		x		x			x	x		x				x
LA	x		x			x	x			x(2)		x			
ME	x		x			x	x		x		x		x		
MD	x		x		x		x		x			x			
MA	x		x			x	x		x		x				x
MI	x		x			x	x		x			x			
MN	x		x			x	x		x			x			
MS	x		x		x			x	x			x			
MO	x		x			x		x	x			x			
MT	x		x			x		x	x			x			
NE	x		x			x	x		x			x			
NV	x		x			x		x	x			x			
NH	x		x			x	x		x			x			
NJ	x		x		x		x		x			x			
NM	x		x		x			x	x		x				x
NY	x		x			x	x		x		x			x	
NC	x		x		x		x		x		x				x

STATE	Q31		Q32		Q33		Q34		Q35		Q37		Q38		
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	MOST	SOME	FEW
ND	x		x			x		x	x		x				x
OH	x		x			x	x		x			x			
OK	x		x			x	x		x			x			
OR	x		x			x	x		x		x				x
PA	x		x			x	x		x		x			x	
RI	x		x			x	x		x			x			
SC	x		x		x		x		x			x(4)			
SD	x		x		x			x	x			x			
TN	x		x			x	x		x			x			
TX	x		x			x	x		x		x				x
UT	x		x			x	x		x			x			
VT	x		x		x			x	x		x			x	
VA	x		x			x	x		x		x				x
WA	x			x	x		x		x			x			
WV	x		x			x	x		x			x			
WI	x		x		x		x		x			x			
WY	x		x		x			x	x			x			

(1) Indefinite quantity contracts are for sole source items only, therefore, no alternate bids need be evaluated. (2) Product evaluation procedures are the same for competitively bid contracts both definite and indefinite quantity. No product evaluation is usually done for multiple award contracts. (3) DOT has testing lab available on request. Some food products are tested by committees of dieticians. Some use is made of Buyer's Laboratory testing service. (4) South Carolina reserves the right to solicit large or unusual quantities.

Q39. As a rule, do the State's indefinite quantity term contracts provide for price adjustments?

Q40. Do any of your State's indefinite quantity contracts (including multiple award contracts) carry provisions which allow for renewal without rebidding at the end of the designated time period?

Q41. If yes, how frequently does this occur?

STATE	Q39				Q40		Q41		
	UPWARD ADJUSTMENTS	DOWNWARD ADJUSTMENTS	BOTH	NEITHER	YES	NO	OFTEN	SOMETIMES	RARELY
AL			x			x			
AK			x		x		x		
AZ			x		x		x		
AR				x	x				x
CA			x		x				x
CO			x			x			
CT			x		x			x	
DE				x	x			x	
FL		x			x			x	
GA			x		x		x		
HI				x	x				x
ID				x	x		x		
IL			x			x			
IN				x	x		x		
IA			x		x			x	
KS				x	x		x		
KY			x		x		x		
LA		x			x		x		
ME			x		x			x	
MD			x		x			x	
MA			x		x			x	
MI			x		x		x		
MN			x		x		x		
MS		x			x		x		
MO				x	x				x
MT				x	x		x		
NE			x		x				x
NV			x		x			x	
NH			x		x		x		
NJ		x			x		x		
NM				x	x				x
NY			x		x			x	
NC			x		x				x
ND				x	x			x	
OH			x		x				x
OK		x				x			
OR			x		x		x		
PA			x		x			x	
RI				x		x			
SC			x		x		x		
SD			x		x		x		
TN			x			x			
TX			x		x			x	
UT			x		x		x		
VT				x	x		x		

STATE	Q39				Q40		Q41		
	UPWARD ADJUSTMENTS	DOWNWARD ADJUSTMENTS	BOTH	NEITHER	YES	NO	OFTEN	SOMETIMES	RARELY
VA			x		x		x		
WA			x		x		x		
WV			x		x			x	
WI			x		x			x	
WY			x		x			x	

Q42. Apart from the usual methods of evaluating the acceptability of a purchase price, has your State experimented with any new method?

Q43. If yes, please describe this method and explain how it helps you obtain a better price.

	Q42		Q43*
	YES	NO	
AL		x	
AK		x	
AZ	x		Life cycle costing, energy conservation
AR		x	
CA	x		Life cycle, modified life cycle and useful life techniques, price is not necessarily better--evaluations or awards based on total cost or total cost per year basis.
CO	x		Life cycle costing.
CT		x	
DE		x	
FL	x		Life cycle costing in contracting for energy efficient products.
GA	x		Volume buying through scheduled buys and contracts.
HI	x		Life cycle costing.
ID	x		Use of Request for Proposals in DP equipment WP equipment; negotiations - vocational rehabilitation.
IL	x		
IN		x	
IA	x		Life cycle costing; evaluation criteria to give points to mandatory and desirable features of data and word processing equipment that may offset lower initial price but guarantee service and reliabiliy; buy quiet formulae for lawn mowers and chain saws.
KS		x	
KY		x	
LA	x		Value analysis; life cycle costing, energy saving evaluations.
ME		x	
MD	x		Life cycle costing and modified life cycle costing (Room size air conditioners are bid and evaluated on basis of lowest responsive bid (price) plus EER and cost of electricity for five years. Lowest base price may not be the best buy. Automobiles are bid using the cost of gasoline and EPA MPG for 60,000 miles added to base price to determine lowest ultimate price.)
MA	x		Increased multi-vendor awards and also awards for a full product line.
MI		x	Have used life cycle costing over the years.
MN		x	
MS		x	Except for life cycle costing.
MO		x	The use of weighted evaluation criteria in the acquisition of professional services and complex equipment items. Life Cycle Cost in contracting for energy efficient products.
MT		x	
NE		x	
NV	x		Life cycle costing.

	Q42		Q43*
	YES	NO	
NH		x	
NJ	x		In the acquisition of professional services, use a two-step process: (1) score proposals based on technial capabilities, and (2) consider the price submission--Awards not given strictly on a low-bid basis.
NM	x		Compare product and price periodically with other States and test market conditions.
NY	x		Use life cycle costing in the evaluation of bids where the equation used is stated in the specification--This does not always turn out to be the lowest initial price, if that is the meaning of "a better price," e.g. passenger cars, limestone, air conditioners, germicidal detergents.
NC		x	
ND	x		Life cycle costing, two-step bidding
OH	x		In multiple award type contracts based on qualified products list and diversified requirements of state agencies.
OK	x		Life cycle costing.
OR		x	
PA	x		Life cycle costing.
RI		x	
SC	x		Life cycle costing and energy efficiency considerations.
SD		x	
TN		x	
TX		x	Life cycle costing
UT	x		Life cycle costing and energy consumed
VT		x	
VA	x		Life cycle costing (not widespread however).
WA	x		Life cycle costing; energy cost effectiveness; in-use testing prior to bid.
WV	x		Life cycle costing and energy efficiency consideration
WI	x		Use cost formulas.
WY	x		Allowing a "preference" (weight factor in evaluation criteria) for fixed firm price for longer periods of time; examples are drug and laboratory supplies contracts.

*Answers to this question speak largely to lowering overall costs rather than to evaluating the acceptability of initial price.

Q44. Do you use multiple award contracts or price agreements, that is, the award of an indefinite quantity contract to more than one supplier for furnishing a like item or category of items?

Q45. Are there specific statutory provisions or rules and regulations which authorize the award of a contract to more than one bidder?
Q46. If yes, please provide copies and citations. (Not tabulated here.)

Q47. How frequently are multiple award contracts awarded under sealed bids?

Q48. How frequently are multiple award contracts awarded by negotiation without bids?

	Q44		Q45		Q47			Q48		
	YES	NO	YES	NO	OFTEN	SOME-TIMES	RARELY	OFTEN	SOME-TIMES	RARELY/ NEVER
AL	x			x		x				x
AK	x			x		x				x
AZ	x			x		x				x
AR	x			x			x			x
CA		x								
CO	x(3)									
CT	x			x		x				x
DE	x		x				x		x	
FL	x			x			x			x
GA	x(1)			x			x			x
HI		x		x						x
ID	x		x			x			x	
IL	x			x	x					x
IN	x			x	x					x
IA	x			x		x				x
KS		x		x						
KY	x		x		x					x
LA	x		x		x					x
ME	x			x		x				x
MD	x		x			x			x	
MA	x			x		x				x
MI		x		x						
MN		x								
MS	x		x				x	x		
MO		x		x			x			x
MT		x								
NE	x		x				x		x	
NV	x			x	x					x
NH	x		x				x			x
NJ	x		x				x			x
NM	x			x			x			x
NY	x		x		x					x
NC	s		s		s					s
ND		x		x			x			x
OH	x			x	x					x
OK	x			x			x			x
OR	x		x				x			x
PA	x			x		x				x
RI		x								
SC	x			x		x			x	

	Q44		Q45		Q47			Q48		
	YES	NO	YES	NO	OFTEN	SOME-TIMES	RARELY	OFTEN	SOME-TIMES	RARELY/ NEVER
SD		x								
TN		x		x						
TX	x		x			x				x
UT	x		x			x				x
VT		x								
VA	x			x		x				x
WA		x								
WV	x			x			x			x
WI	x		x				x			x
WY	x		x				x			x

(1) Uses rarely - (only for technical equipment where interfacing of common units is required or if vendor cannot supply total requirements.) (2) Only two commodities under multiple awards and intends to discontinue those. (3) Only one multiple award for typewriters.

Q49. After award, is it mandatory that requirements for State agencies under the jurisdiction of the central purchasing office be obtained in accordance with the prices, terms, and conditions of multiple award contracts, or is use of these contracts optional?

Q50. If yes, can the central purchasing office authorize exceptions, if justified?

Q53. Do any of your State's multiple award contracts contain a most-favored-customer clause?

	Q49		Q50		Q53	
	MANDATORY	OPTIONAL	YES	NO	YES	NO
AL	x			x		x
AK	x		x			x
AZ	x		x			x
AR	x		x			x
CT	x		x			x
DE		x				x
FL	x		x			x
GA	x		x			x
HI		x				x
ID	x		x			x
IL	x		x			x
IN	x		x			x
IA	x		x		x	
KY	x		x			x
LA	x		x			x
ME	x		x			x
MD	x		x			x
MA	x		x			x
MS		x				x
NE	x		x			x
NV	x		x			x
NH	x		x			x
NJ	x		x			x
NM	x			x		x
NY	x		x		x	
NC	x		x			x
CH	x			x		x
OK	x		x		x	
OR	x		x			x
PA	x		x			x
SC	x		x			x
TX	x		x			x
UT	x		x			x
VA	x		x			x
WV	x		x			x
WI		x				x
WY	x		x			x

* Only those States using multiple award contracts were required to answer this section of the survey.

Q51-52. In the experience of your State, has there been any definite indication or evidence that GSA's most-favored-customer pricing clause is affecting the prices of supplies available to state agencies? If so, what indications have there been?

AL: Yes - the vendors will not give a better price than than the price given the federal government under the most-favored-customer clause.

AK: No

AZ: Yes, based on some bid prices.

AR: Don't know.

CA: Yes

CO: Yes - Some firms wil not bid lower than GSA price, e.g., IBM.

CT: Don't know.

DE: Yes - We issue multiple awards for office equipment and find that for the most part our prices are identical to GSA. State law which allows us to negotiate contracts without competitive bidding requires that we obtain prices which are at least as good or better than those obtained by GSA.

FL: Yes - It has been especially evident in office equipment, e.g., copiers, dictation equipment, calculators, typewriters, etc., that no matter what quantity or how distant from the factory shipping point, there is only one price available to governmental users and that is the Federal government price. Because of the Federal use of the most favored customer pricing clause, suppliers fear--and have experienced--reprisal by the Federal government should a better price be offered to a state or local government.

GA: Yes - National companies are very reluctant to lower prices after setting the GSA price, notably IBM, Xerox, Dictaphone.

HI: Yes - Vendors indicate that they are unable to bid at all, or cannot offer their best price, no concrete data to prove such is the case.

ID: Don't know. If vendor bids his GSA price, he probably loses.

IL: Yes - Most bids for lease and/or lease/purchase of photocopy machines are identical to the GSA price schedules. Major manufacturers such as Xerox and IBM tell us frankly that they cannot bid lower than the GSA price schedule. They will freely admit that the most-favored-customer pricing is not a written part of the GSA negotiation process but is a mutually understood practice. 3M and Savin on the other hand have bid lower than GSA price for leasing photocopy equipment while maintaining the GSA prices for the outright purchase of the equipment.

IN: No

IA: Yes - Salesmen have stated they would not bid under the prices of GSA contracts for same item.

KS: Yes - Companies will not bid lower than prices quoted to GSA because bidding lower would "cause us trouble with GSA."

KY: Yes, but limited. GSA firms are, in some cases, reluctant to offer pricing below their contract amount because of either real or assumed recourse from the GSA for like prices Some firms do offer lower prices--others do not.

LA: Yes - Statements from vendors.

ME: Don't know.

MD: Yes - After GSA investigation was initiated, pricing information was exchanged between states and the news media. When holders of both our contracts and GSA contracts learned of this, we were told verbally that in the future, the State of Maryland will pay more.

MA: Don't know. (Reply from University of Mass. Purchasing Office says: "Tax exempt, educational institutions could often obtain lower prices except for GSA's most-favored-customer rule.")

MI: Yes - Vendor statements, vendor inflexibility, vendor expressed desire to use "GSA prices " vendor fear of GSA reprisals.

MN: Yes - Some vendors have stated that they will not bid lower than their extablished GSA prices.

MS. Yes - Repeatedly vendors representing commodities covered by GSA contracts inform us that GSA penalty would prevent them from selling to us at less than the GSA price.

MO: Yes - Based on statements of representatives of major firms who deal directly with purchasing (rather than through a dealer), they will not bid lower than GSA prices.

MT: Yes - Companies are obligated not to bid lower that GSA prices, i.e. vendors use GSA as floor prices.

NE: Don't know.

NV: Yes - Nothing but GSA prices on copying machines. Vendors indicate they cannot sell for less without penalty from GSA.

NH: Don't know.

NJ: Yes - On occasion vendors state they cannot give states prices lower than the federal government. However, our response to this is that GSA has no such regulations.

NM: Yes - Some supplies that are normally offered under GSA are purchased by competitive bid, end result is that our price is considerably lower than GSA.

NY: Yes - vendors frequently indicate they can't quote lower than GSA price

NC: Yes - Bidders submitting proposals priced at GSA levels occasionally indicate that they are prevented from offering lower prices by the "most-favored-customer pricing clause."

ND: Yes - Vendors say they cannot bid lower than GSA prices. We have encountered a few instances where they did bid lower.

CH: Yes (No answer to 52)

OK: Yes - Some vendors tend to base their bids solely on GSA prices. This results in prices which are higher than prices which the state would get on a competitive bid

OR: Yes - GSA contractors refuse to give prices lower than GSA schedule while independent dealers often bid substantially lower. Our most serious problems are where there is no independent dealers and we must buy from the GSA Contract holder, e.g., A-M International, IBM, Pitney Bowes, Xerox.

PA: Yes - vendor contact.

RI: Yes - when calling for bids from companies, they will not bid lower than GSA prices.

SC: Yes - the vendors who handle items that are under GSA contract under multiple awards complain that they cannot offer better prices in direct competition under our bidding procedures for a specified item or equal.

SD: Yes - Vendors use GSA price catalogs for quotes, especially office products and equipment.

TN: Yes - The practice by some manufacturers is especially evident when procuring office products and supplies.

TX: Yes - In the bidding process; In conversations with bidders.

UT: Yes - Most companies say they can't give the state a better price than they give GSA

VT: Yes - I am totally perplexed on occasion when I find the methods by which GSA occasionally purchases. In the past, at least, GSA has directly interferred in the purchasing affairs of states by specifying verbally or in contract form to the suppliers that they are not permitted to sell to anyone else at a lower price than what that supplier quoted to the federal government. I, for one, think this to be totally wrong.

VA: Don't know.

WA: Yes - Several vendors have insisted that GSA will not allow them to give the state lower prices.

WV: Yes - Many vendors will only offer their GSA price, stating they cannot give a better price because of the "most-favored-customer" requirement of the federal government.

WI: Yes - GSA price lists, etc. - definite indications that suppliers will not quote below "GSA" list, when to do so would be advantageous to the bidder and to the state, even when there is not a direct relationship between the basis of the GSA price list and the basis of the state's bid.

WY: No - There used to be but that has been overcome.

Q54. Broadly speaking, under what circumstances or conditions is it advantageous to make a multiple award instead of a single award?

AL: Where vendors are selling to the federal government under the most-favored-customer clause--the price is the same to the state whether the items are repetitively bid or annual bid.

AK: Where transportation costs are prohibitive; Convenience of the agencies.

AZ: Geographical location; size of contracts.

AK: Supply items for technical equipment, e.g., microfilm.

CT: Where the technical diversity of the products makes detailed evaluation difficult or impossible (e.g., calculators, copiers).

DE: For office equipment, since it is difficult to evaluate bids on equipment without consideration to the specific needs of the agency requiring the equipment.

FL: When it is not possible to develop a technical specification which will adequately meet the state's needs and where the complexity of available equipment is unique to each manufacturer and not compatible within the industry, e.g., word processing equipment, central dication systems, etc.

GA: For technical equipment used as part of a system that must interface with other units; Where statewide maintenance service is required and the low vendor can support only in a limited area; Where special features are sometimes required and the low vendor cannot provide; Where one vendor cannot supply the total requirement.

HI: Where the type of commodity has a variety of end uses, and it may be inappropriate to mandate use of one product for all end uses.

ID: Pharmacueticals until we have the staff to write the "generics"; Also "auto parts," helicopter service.

IL: Such products as ready-mix concrete, road rock and aggregate because of their bulk, the length of haul and the inherent expense in the delivery of the product. In those instances, multiple awards should be made to permit users such as highway departments to obtain the product from the closest or most economical source, taking into account per mile delivery costs.

IN: When the product is needed at many locations throughout the State. Examples: (1)to insure quick replacement parts for vehicles, due to down time; (2) in supplying aggregates, etc , due to location and delivery weight.

IA: When there is not a wide variation in price or quality of a particular commodity; When vendors do not supply the entire state; Multiple awards give agencies a selection, yet insure that control over the contractor is exercised at central level; Reduces administrative expense by reducing the number of spot bids.

KY: When a product line has a wide range of quality levels and in high demand by our agencies e.g., hand tools; drugs; hospital supplies; When

central purchasing office desires to broaden its source base, e.g., gasoline, oil products, lab supplies; When it is more economically feasible to issue such contracts on the basis of price, delivery, service or quality.

LA: Difficulty in writing specifications due to the lack of uniform characteristics between various brands. In addition, compatability with existing equipment at various agencies can be a factor.

ME: Geographic locations.

MD: For adequate delivery, service, availability, or for product compatibility.

MA: To make sure of consistently getting bids on all commodities; To allow for a larger scope of competition; Increased choice of commodities to fit end use; A more convenient policy for service on some commodities.

MI: It allows for product preference; More possibility of geographical advantage; Availability or product enhanced.

NE: Best interest of state.

NV: Motor oil is a good example, Awarded geographically on the best bid.

NH: Where price lists differ with neither company consistently low; Where delivery times differ and prices are approximately the same.

NJ: Multiple awards often provide equipment compatability and interchangeability of parts. In certain circumstances - for example, teaching aids and educational products - the use of the multiple award gives the instructor the capability of selecting materials most beneficial to his classroom environment.

NM: When vendors bid on specific geographical locations; Multiple awards are utilized with strict reservations such as service contracts, office maintenance equipment, minor vehicle repairs, miscellaneous office supplies.

NY: Where there is a justifiable user preference for a particular make or model, e.g., interchangeability of accessories and parts, extensive training necessary for support staff to operate new equipment, Professional preference, example: surgeon's instruments.

NC: When a single supplier is unable to provide the required products and service.

OH: Diversification in the requirements of the state agencies, Computer items compatibility; Furniture items in accordance with the requirements of individual institutions such as hospital beds.

OK: Where multiple parts are needed or local supply is critical; Actually seldom are multiple awards advantageous.

OR: Where user preference has a greater impact on the effective utilization than does performance or design differences.

PA: At times a using agency prefers a specific item and with a multiple

award they can obtain their preference.

SC: Best interest of state.

TN: When one supplier is unable to meet the state's total requirements.

TX: When it is evident that a single source contract will result in little acceptance by the using agencies resulting in large increase in open market activity and excessive paperwork.

UT: Tires, paper, copiers, calculators have been awarded to two or more vendors depending on how specification is written. Not all awards are made to the bidder for alike items--cherry-pick when the price and brands serve the best interest of the State.

VA: When, due to purchase volume and/or delivery requirements, it is doubtful that any one supplier would be able to properly service the contract; Where features vary from brand-to-brand to the extent that it is felt to be advantageous to offer some degree of choice to the using agencies; Where one vendor cannot adequately service all areas of the state.

WV: Only when the price of individual orders cannot be determined in advance, e.g., when a per mile haul cost is involved and location becomes as important if not more important than material cost.

WI: Small volume does not justify spec construction and bidding process. Product polarization, i.e typewriters.

WY: Where time or distance factors make immediate availability a consideration or when required product compabilitity with existing equipment is a consideration.

Q55-56. In making multiple awards, do you ever limit the number of successful bidders or suppliers for a particular item or contract? If yes, What are the usual factors considered in determining the number of suppliers for an item:

AL: Yes - Price, availability, location service capability

AK: Yes - Price and/or discount offered and location of vendor.

AZ: Yes - Geographical location, size of contracts

AR: No

CT: Yes - Prices, service capabilities, bidder must be authorized dealer

DE: No

FL: Yes - Pricing for line items; Terms and conditions unacceptable to the state.

GA: Yes - Service capability, ability to supply require volume.

HI: No

ID: Yes - Capability of supplier and service required

IL: Yes - For the types of contracts in Q54 it is a matter of Buyer judgement. If, for example, there are ready-mix concrete plants across the street from each other, the low bidder gets the award. If both have the same cu.yd. price and the same rate per mile of haul both get an award. On the other hand, in a densely populated area, several companies may receive an award based on the lowest cost within the geographic area.

IN. Yes - Depends on nature of commodity; may need suppliers in many locations.

IA: Yes - Price, service, coverage of state.

KY: Yes - Number of suppliers determined basically by the need of agencies for a product and the number of awards to insure coverage of that need. Usually will be 2 to 4 suppliers.

LA: Yes - Contracts issued by brand name - one prime contractor for each brand; Location, service also considered.

ME: No

MD: Yes - Vendors that are considered to perform satisfactorily, (delivery and service) and have sufficient supply and the most advantageous price to the state.

MA: Yes - Scope of product line, choice of lowest price for each category service on some commodities, location of distributors.

MS: No

NE: No

NV: No - Awards to all but actually buy only from those with lowest price.

NH: Yes - Price, transportation costs.

NJ: Yes - In certain areas contracts are awarded to a primary and backup source; For example, this is common in data processing supplies where the availability of supplies is essential to avoid computer shutdowns.

NM: Yes - Capability of supplier and service required by user.

NY: Yes - usually don't award more than one contract on a particular manufacturer's line. Volume of sales under previous contract and project volume.

NC: Yes - Policy limits awards to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care is exercised to protect the character and principles of competitive bidding, and dividing quantities among bidders is done only when absolutely essential to the effectiveness of the contract.

OH: Yes - a complete line; QPL; selection of acceptable manufacturers based on broad range involved in the line of items.

OK: No - all bids are tabulated; a graduated list of bidders, with lowest and best listed first is sent to agencies. The agencies have the authority to choose the supplier; however, they are expected to buy from lowest and best. Must justify their choice if lowest and best is not used.

OR: Yes - Price; Completeness of line; Service capabilities.

PA: No

SC: Yes - Quality Level, Features

TN: N/A

TX: Yes - Volume of business done under past contract; Similarity of items; Difference in prices.

UT: Yes - Geographical location, service capability.

VA: Yes - the estimated quantity to be purchased; Do not want to spread the quantity so thin that it would not be attractive to the bidder. The amount of service required with or after the sale; the extent of product differences compared to the needs of the using agencies.

WV: Yes - Our process of multiple awarding tends to determine number of suppliers.

WI: Yes - Determination of acceptable product enough sources to meet need.

WY: No

Q57. To what extent is a buyer's recommendation or decision on a contract award subject to review and approval?

AL: All buyer's recommendations are reviewed by their supervisor and approved by the Purchasing Agent. If a low bid is rejected, the Legal Division must sign off.

AK: Approved by senior Purchasing Agent.

AZ: Evaluation group when necessary; Supervisory review.

AR: Manager reviews buyer's recommendations. Manager signs contracts for $10,000 or less. Assistant Director signs contracts between $10,000 and $25,000. Director signs all term contracts and firm contracts over $25,000.

CA: Written recommendation by buyer is reviewed and approved by Principal Buyer and by Purchasing Manager. Contract Award signed by Chief of Procurement.

CO. In case of an official protest. In "problem cases" the situation is reviewed with management before an award is made.

CT: All recommendations are reviewed and approved by the Chief of Procurement or, in his absence or in the case of possible controversial decision, by the Deputy Commissioner of Purchases.

DE: Buyer's recommendations are reviewed by either the Assistant Director or the Director who must award the contract. State Auditors audit all purchasing contracts annually.

FL: Generally four levels of review and approval, i.e , Supervisor, Bureau Chief, Division Director and Executive Director.

GA: Totally--buyers, supervisors and assistant directors have graduated levels of approval by dollar value based on responsiblities of position. Buyers are instructed to consult with their supervisor on any controversial award. Vendors may appeal all the way to the director level.

HI: Award is reviewed by Division Chief, then award letter is signed by State Comptroller.

ID: If other than lowest responsible bidder, then by the Administrator.

IL: Buyers are given written parameters outlining duties, responsibilities and authority. All buyers are required to obtain approval of Supervisor to reject or bypass a low bid and are required to give written justification. Junior Buyers are required to obtain supervisor's approval for an award in excess of $5,000. All buyers are instructed to apprise Supervisor, the Assistant Deputy Director and seek guidance on any unusual purchasing problem.

IN: Reviewed other than low bid meeting specifications.

IA: Greater than $10,000. must be reviewed and approved by Chief Purchasing Officer. Greater than $15,000. must be reviewed and approved by

Director of General Services. Aggrieved bidders may appeal to the Executive Council.

KS: Buyers recommendations and/or decisions are subject to review and approval by the Director of Purchases as well as the Secretary of Administration. Further, records of all purchasing transactions are maintained in files open for public review.

KY: His award decision is subject to review at all levels, if in the buyer's opinion such reviews are necessary. Problem awards are brought to the attention of the Director and a coordinated review is made as required. Majority of awards made solely by the buyers.

LA: Director approves all contracts. Each contract must have Supervisor's and Assistant Director's approval also.

ME: If it appears to be a controversial award. If a vendor seriously questions award. If a gross mistake is made on a bid by the vendor.

MD: Buyer's award authority is limited to purchases under $10,000. Purchases $10,000 to $30,000. must be approved by Chief or Supervising Buyer. Purchases $30,000. and over must be summarized showing bids solicited, bidders responding and basis for award. These must be approved Supervising Buyer, Chief of the Bureau and Director of Central Services before awarded.

MA: A great amount of responsibility is placed on the recommendation or decision of the buyer.

MI: Always above a specific dollar level.

MN: Purchases over $500. Purchases over agencies estimated prices. Purchases from other than the low bidder

MS: Not having central purchasing the question has no application.

MO: Junior buyer after training up to $2,000. Lead buyer to $20,000. Purchasing Manager $20,000 and over.

MT: The purchasing agent Supervisor reviews bid awards prior to mailing of purchase orders.

NV: All buyer recommendations are reviewed and approved by at least one other person and often times several persons.

NH: When it is difficult to determine lowest bid meeting requirements; When bidder objects to buyer's action; When Department Head differs with buyer.

NJ: All contract awards where a low bid is being bypassed in excess of $2,500. is subject to review and approval by the Director.

NM: It is reviewed by the senior Purchasing Analyst and the Deputy Director

NY: Contract award decisions of buyers are subject to review by: Senior Purchasing Agents - one for each team of four or five buyers; A senior purchasing agent can sign contracts with a value of up to $100,000. Supervising Purchasing Agents - supervises teams, signs contracts with a

value of up to $1,000,000. Director of Purchasing signs all contracts over $1,000,000.

NC: The award of all contracts in excess of $5,000 are reviewed with the State Purchasing Officer and canvassed with the Board of Award. The Board of Award is comprised of two or more members of the Advisory Budget Commission. Concurrence by the above constitutes an award.

ND: All major awards are reviewed jointly by the Director of Purchasing and the buyer.

OK: By Assistant Director and Director on all awards over $5,000.

OR: In case of protest by either the receiving agency or an unsuccessful bidder, the transaction is reviewed by management.

PA: It must be reviewed by his superiors and also by a Fiscal Office under jurisdiction of the Treasury Department and by an Assistant Attorney General.

RI: Administrative review and approval by next highest level of supervision to assure compliance to procedures, prior to signature by State Purchasing Agent.

SC: Any award that is recommended to other than low bid is reviewed by two levels of supervision above the buyer.

SD: Each contract is reviewed by the Director before it is awarded.

TN: Subject to review and approval by the following officers in ascending order: Buyer Supervisor, Director of Buying, Assistant Commissioner for Procurement, Commissioner of General Services, Board of Standards.

TX: Each contract is subject to review and approval by both a Senior Buyer and the Director for Purchasing.

UT: Contracts are reviewed and approved by Director of Purchasing.

VT: Daily review by superiors.

VA: It can be reviewed by his superior. All purchase orders over $1,000. for one-time purchases are approved by the Purchase Manager. Any decision may be appealed to the Purchases and Supply Appeal Board.

WA: Buyers can approve orders variously depending upon amount of training and grade, ranging from $500 to $20,000; Group managers similarly, based on training, to $40,000; Above $40,000 and purchases involving sole source, other than low bid, or proprietary specification require approval of Deputy Director or Director.

WV: Review and approval by Supervisor or Director. Review and approval by Commissioner of Finance and Administration. Review and approval by Attorney General.

WI: Slight; usually only on challenge.

WY: Most review is done internally by the Program Manager and the Division Administrator--periodic audits by Legislative Audit Division required statutorily.

Q58. Is there a legal or regulatory requirement that the purchasing program be reviewed for compliance with applicable laws, rules, and regulations?

Q59. Are reviews of the purchasing program conducted on a regular basis?

Q60. Do the using agencies receive and inspect items purchased under contracts made by the central purchasing office?

Q61. Does the central purchasing office have its own inspectors to assist or supplement inspection of the products delivered to agencies?

Q62. Is there a board, commission, or staff unit whose primary responsibility is to oversee and/or enforce State purchasing procedures?

	Q58		Q59		Q60		Q61		Q62		
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	
AL	x		x		x		x			x	
AK		x		x	x			x		x	
AZ	x			x	x			x		x	
AR	x		x		x		x			x	
CA		x		x	x		x			x	
CO	x			x	x			x		x	
CT		x	x		x		x		x		
DE	x		x		x			x		x	
FL	x		x		x		x			x	
GA	x		x		x			x		x	
HI		x		x	x			x		x	
ID	x		x		x			x		x	
IL		x	x		x		x			x	
IN	x		x		x		x			x	
IA		x	x		x			x		x	
KS	x			x	x			x			x
KY	x			x	x		x		x		
LA	x		x		x			x		x	
ME		x		x	x		x		x		
MD	x		x		x			x	x		
MA	x			x	x		x		x		
MI		x	x		x		x			x	
MN	x		x		x		x			x	
MS	x		x		x			(1)	x		
MO	x		x		x			x		x	
MT	x		x		x			x	x		
NE		x		x	x			x		x	
NV	x		x		x			x		x	
NH		x		x	x		x			x	
NJ	x		x		x		x			x	
NM		x		x	x			x	x		
NY		(2)	x		x		x			x	
NC	x		x		x		x		x		
ND	x	x	x		x			x		x	
OH	x		x		x		x		x		
OK		x	x		x		x		x		
OR	x		x		x			x	x		
PA	x		x		x		x			x	
RI		x		x	x		x			x	

	Q58		Q59		Q60		Q61		Q62	
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
SC	x		x		x		x		x	
SD	x		x		x			x		x
TN	x		x		x		x			x
TX		x	x		x		x		x	
UT	x		x		x			x	x	
VT		x		x	x			x		x
VA		x		x	x			x		x
WA	x		x		x			x		x
WV		x		x	x		x		x	
WI	x		x		x			x	x	
WY	x		x		x			x		x

(1) Does not have central purchasing. (2) There is a pre-audit requirement before contracts over $5,000 are awarded.

Q63. How does the State ensure that contracts are awarded properly, that contract conditions are met and, generally, that procurement practices are consistent with statutory requirements?

AL: By audit by the examiners of public accounts.

AK: Internal review primarily; If a question or problem arises then it is investigated by administrative staff, state internal audit and/or the ombudsman's office.

AZ: Management review in state purchasing office, bidders peer review.

AR: The office of State Purchasing is audited regularly. A team from the Office of Purchasing visits agencies to work with them and to audit their purchasing procedures.

CA: Through occasional audits by Auditor General's Office, Legislative Analyst Office, Department of Finance - Audit Division, General Services - Audit Office, and by management reviews within Office of Procurement.

CO: No official means; May have an internal auditor assigned by the Department of Administration to review the Division of Purchasing. The real answer is the State employees--buyers and managers in purchasing who have the highest honesty and integrity.

CT: Chief of Procurement reviews all award recommendations; Inspectors periodically check shipments to agencies for conformance; Complaint report forms are followed up by inspectors or purchasing offices as applicable; Bureau of Purchases has direct input into all statutory requirements that concern procurement practices.

DE: The State Auditor must perform this function yearly.

FL: Agency purchasing offices are audited by the Legislative Auditor for adherence to the Division's rules and regulations which in 13A-1.02 and 13A-1.06 address those procurement practices controlling bidding and contractor performance.

GA: Inspector must approve contracts; Staff attorney must review and approve; All purchase order and contract awards are audited monthly; Staff attorney coordinates closely with Sr. Ass't. Attorney General

HI: Pre-Audit Branch reviews all contracts in the course of encumbering funds. In addition, all vendors keep a close watch on purchasing practices. Vendors have recourse through the Governor, State Comptroller, and the Ombudsman.

ID: Under the Rules and Regulations as required by statute.

IL: By post audit both financial and procedural. Additionally, bid records are public information and open for inspection by any interested party. Also, Procurement Inspectors regularly inspect merchandise at the receiving agency for compliance with specifications and submit daily reports to the Procurement Services Office. Illinois also has a complaint procedure which requires the receiving agency to report non-compliant conditions, including late delivery to both the vendor and the Procurement Services Office. It is the responsibility of the

appropriate buyer to bring that complaint to a satisfactory conclusion. The user agencies are also subject to the post audits mentioned in Q63. Any non- compliant condition would also be reported to the Procurement Services Office.

IN: This is the burden of the buyers, other than low bid meeting specifications, which are reviewed by the Director and the Commissioner of the purchasing office. All bids are audited by the State Board of Accounts periodically. They check for compliance, procedure, etc.

IA: Purchasing Division/Department of General Services are responsible for insuring that the first and last conditions in Q63. are met. Agencies must notify Purchasing if there are problems with second condition, and Purchasing follows up.

KS: The Division of Purchases functions under supervision of the Secretary of Administration, a Cabinet Level appointee of the Governor, and all activities of the Division are subject to audit at any time by the Division of Legislative Post Audit. Also, all bid files are public information.

KY: Responsibilities, controls and procedures are set forth in the Law (Model Procurement Code) and implemented by administrative regulations. There is an adequate system of checks and balances, controls, supervision and procedures at all levels in the purchasing process to insure an effective system.

LA: Central Purchasing is audited by the Legislative Fiscal Office and internal audit. The Ethics Commission will review actions and public pressure from vendors and communications media makes sure actions are proper.

ME: Through a Contract Review Committee made up of: the State Budget Officer, the Director of Accounts and Control, the Director of Public Improvements, the State Purchasing Agent.

MD: Every 18 - 24 months, a legislative audit is conducted; Equipment purchased with proceeds from sale of bonds (capital funds) must be approved by the State Board of Public Works - members consist of the Governor, the Comptroller and the State Treasurer; By having built-in dollar threshold requiring approval above buyer level.

MA: Contracts are closely watched over and analyzed by the Purchasing Agent, the Deputy Purchasing Agent and the Assistant Purchasing Agent.

MI: This is the responsibility of the State Purchasing Director.

MN: Periodic review by legislative auditor; Buyer activities reviewed by senior buyer; Detailed operation manual; Public inspection of bid files; Contract conditions monitored by using agencies and traveling inspector.

MS: All contracts are reviewed by this office to determine that these provisions are complied with.

MO: Internal review of the various levels of purchasing management. The State Auditor performs a yearly performance audit to assure that all purchases are consistent with statutory requirements and that the procurement policies and practices are adhered to.

MT: All purchasing procedures are readily available for public review The State Legislative Auditors perform an audit approximately every two years.

NE: Meetings - vendors - agencies - integrity.

NV: Legislative and federal audits.

NH: Occasional legislative audit

NJ: The Office of Legislative Service, an arm of the Legislative Branch, conducts periodic reviews of the procurement processes of the State of New Jersey. This is done to ensure compliance to statute regulations and requirements. Additionally, inspection staff is employed to insure product compliance to specifications. A Quality Assurance Program for the State of New Jersey has been partially implemented to insure compliance to contract requirements.

NM: State has a complaint report form that is used by the user agency to report any discrepancies. Minimum specifications are established prior to releasing for competitive bidding. Award is made if approved by the Director to lowest bid meeting minimum specifications, terms and conditions.

NY: Levels of supervisory review; the State Comptroller's Office approves all contracts over $5,000; vendor performance under a contract is monitored by this office (for example, routine inspections of items delivered under a contract are conducted); procedures have been established for agencies to report deviations, late deliveries or other problems.

NC: Awards must be concurred in by policy board consisting of legislators and appointees of governor; Close working relationship with Attorney General's office; Reports of traveling inspectors.

N' Review within the Division and communication with using agencies, buyer visitations to agencies. Compliance audited by state auditor.

OH: No Response

OK: Auditor and inspector are now auditing for this; our own inspectors check; we also match P.O. s against contracts. State Budget Office rejects claims if not on contract.

OR: Internal review of all contracts. Field reviews by purchasing personnel. Audit of the Purchasing Division by external auditor.

PA: Assistant Attorney General reviews all contracts and procedures on Purchase Orders.

RI: Review by supervision and management personnel of the division; Periodic, unannounced reviews of selected commodity transactions by representatives from the department of the Attorney General. Procedural audit/review by legislative audit.

SC: Agencies are subject to audit by the Materials Management Officer in the Division of General Services. Audit compliance has a bearing on agency certification which authorizes purchasing dollar limits.

SD: By audit

TN: Management controls, and all are subject to regular and periodic audit by the Comptroller of the Treasury, Division of State Audit which is an arm of the Legislative Branch.

TX: Internal procedures provide for a system of checks and balances that insure compliance with legal requirements and Commission rules and regulations. State Auditor's periodic audit. Also all payment vouchers for items purchased through central purchasing are processed through central purchasing office for audit against the purchase order before payment can be made.

UT: Contracts are reviewed by contract analysts and purchasing director; tests are conducted when necessary.

VT: No response.

VA: This function is a part of the responsibility of the purchasing staff.

WA: Supervision

WV: By open records, vendor challenges and complaints, the adherence to statutory requirement is assured.

WI: Internal audit and monitoring. Legislative Audit Bureau periodically conducts formal audits.

WY: Through close contact with using agency and informal working agreement with auditors office.

Q64. In your opinion, what areas of state purchasing are most vulnerable to fraud, from within and/or outside state government?

AL: The deliberate acceptance of inferior merchandise.

AK: Purchase of specified products by agencies.

AZ: Food and vehicle procurement.

AR: Purchase of food items; Receiving; Quotation and open market purchases.

CA: Purchases made by state agencies under delegated authority by central purchasing; Smaller purchases made by central purchasing office buyers (below sealed bid $5,000 limit).

CO: Receiving agencies not carefully checking products to insure they meet the specifications.

CT Purchasing done directly by using agencies; Deliveries made to scattered agency locations in lieu of a central warehousing point.

DE: No real problem in Delaware. In past, was a problem with personal service contracts.

FL: Receiving locations, especially in remote locations, are probably the most vulnerable areas.

GA: Agencies are audited monthly, very little chance except possibly collusion on the part of agency for delivery of inferior goods; Even this will be detected since we have a formal "complaint about vendor procedure."

HI: Small purchasing of supplies and other consumable products.

ID: Marketing by large corporation, whereas the smaller vendor is unable to fully market his commodities due to cost factor and time restraints.

IL: Collusion and anti-competitive bid practices among suppliers. There exists in most any supply system a potential for a degree of dishonesty regardless of the checks and balances instituted. It is possible for a using agency to accept something less that specified and then certify that it met the standard.

IN: Individual agencies between agency employees and suppliers.

IA: Small purchases.

KS: Purchases where negotiation is permitted, where individual judgment decisions are required, where competition is not required, and where transactions are not audited or reviewed by other authorities.

KY: No opinion--any system is subject to fraud which is governed by individuals, thus, depending on who is doing what and their attitude toward their responsibilities determines the vulnerability for having fraud--dishonesty in any area. All areas are equal in this respect.

LA: Using agencies.

ME: Outside state government; Vendors or between vendors.

MD: The receiving agency; Central purchasing if buyer's award authority is unlimited.

MA: All those noted plus romancing of purchasing personnel, conflict of interest, collusion and price fixing.

MI: None that we know of.

MN: Purchases made by individual state agencies.

MS: Under the provisions of the negotiated contracts which Mississippi employs, all areas are vulnerable. These are multiple award, negotiated agreements made available to all state, county and municipal entities. Purchase, without limitation, may be made from these agreements with no requirement for competitive bidding being met. The door is wide open.

MO: Receipt of goods at destination. State does not have central warehousing for receiving merchandise or professional inspectors, therefore, inferior merchandise could be received.

MT: The state is most vulnerable to receiving both quantities and quality of materials or services less than that specified.

ND: Failure by agency to check incoming merchandise.

NE: No response.

NV: Too numerous to list.

NH: At the using agency.

NJ: Direct purchases made by using agencies; products and/or services delivered to agencies for which an inspection or acceptance program does not exist; purchases without competitive bidding.

NM: Late delivery; Quality control and inspection at point of delivery is always questionable; This office continuously sends out reminders to user agencies to monitor acceptance of commodities and to report any discrepancies immediately.

NY: Receipt of goods at destination. In New York, procedures have been established for agencies to report deviations, late deliveries or other problems. Also, New York Dept. of Audit and Control periodically conducts audits of state agencies and political subdivisions.

NC: Preparation of bid specifications; Where users are totally dependent upon vendor advice.

ND: Specialized and sole source items, including fabricated items, technical equipment, certain detailed design items, construction materials such as reflective sheeting and sign posts.

OH: No response.

OK: Acceptance of less than quantity or inferior quality by agency itself and

then agency pay for full amount.

OR: Inspection and receiving; Price fixing by suppliers; Agreement by suppliers to divide territories.

PA: Multiple award type purchasing and purchasing at a local level.

RI: Exceptions to, or areas of purchasing activity not within the jurisdiction of a central purchasing authority

SC: Restrictive Specifications. Substitution where there are unqualified inspectors.

SD: The possibility of slanting specifications to include or exclude a particular product or line of products.

TN: Purchase of road construction and maintenance materials, such as gravel, crushed rock, asphalt, etc., Construction contracts; Service contracts.

TX: Use of unnecessarily restrictive specifications; No follow-up inspection by the central office; Setting local purchase limit too high; No procedure for review of local purchases; No review of contract orders issued by using agencies; No audit review by central purchasing of payment vouchers.

UT: Personal service contracts. Fraud could also occur when only one person in charge of disposition of surplus property, i.e., selling, issuing sales order, collecting payment and transfer of monies to original owner (state agency); poor inventory control is also vulnerable to fraud.

VT: Any area.

VA: Emergency and/or single source procurement.

WA: Surveillance of quality and quantity of goods and services received.

WV: Receipt of inferior goods.

WI: None

WY: Construction and service although I know these areas are not covered.

Q65. What remedies are available by statute or regulation in cases of default or fraud by suppliers?

Q66. Are any other remedies available in your State?

	Q65					Q66
	REPLACEMENT OF ITEM	SUSPENSION FROM BIDDING	RECOVERY OF PAYMENTS	DEBARMENT AS SUPPLIER	COLLECTION AGAINST SUPPLIER'S BOND	
AL		x	x	x		Normal fraud statutes
AK	x	x	x		x	Obtain elsewhere and charge defaulting vendor difference in price but it's difficult to enforce
AZ	x		x	x	x	
AR	x	x	x	x	x	May sue to recover value of anything received by an employee or non-employee
CA	x	x	x	x	x	Fraud can result in award of triple damage
CO	x	x	x	x	x	Legal action, i.e., anti-trust
CT	x	x	x	x	x	Purchase of commodity in the open market and charging back to defaulting supplier any difference in price
DE		x			x	Prosecution by the Attorney General's Office
FL	x	x		x	x	Recover reprocurement costs; negotiate price reductions for quality not received in commodities needed and already distributed or used by the state agencies
GA	x	x	x	x	x	We will procure in open market and file suit for added cost
HI					x	Suspension and debarment by practice but not by statute
ID	x	x	x	x	x	Obtain elsewhere and charge defaulting vendor difference in price
IL	x	x	x	x	x	Criminal prosecution by Attorney General
IN	x	x	x	x	x	Court action
IA	x	x	x	x	x	Buy elsewhere and charge added cost to contractor
KS	x	x	x	x	x	Obtain elsewhere and charge defaulting vendor difference in price, Legal action through the Attorney General
KY	x	x	x	x	x	Legal action through the courts; re-procurement costs; prison and fines
LA	x	x	x	x	x	Purchase on open market with surcharge to defaulting supplier
ME	x	x		x		Cancellation of order and reissuing to next lowest bidder
MD	x	x	x	x		Award to next lowest bidder and assess defaulting supplier the difference in price
MA		x	x	x	x	
MI	x	x	x	x	x	Cancellation of contract
MN	x	x	x	x	x	Uniform commercial code provisions

	Q65					Q66
	REPLACEMENT OF ITEM	SUSPENSION FROM BIDDING	RECOVERY OF PAYMENTS	DEBARMENT AS SUPPLIER	COLLECTION AGAINST SUPPLIER'S BOND	
MS		x	x	x	x	
MO	x	x	x		x	Obtain elsewhere and charge defaulting vendor difference in price
MT	x	x		x	x	Buy elsewhere and charge added cost to defaulting vendor
NE		x		x	x	
NV	x	x	x	x	x	Buy item elsewhere and charge defaulting vendor difference in price
NH	x	x	x	x		
NJ	x	x	x	x	x	Legal action
NM	x	x	x	x	x	
NY	x	x	x	x	x	Criminal action by appropriate authorities; obtain elsewhere and charge defaulting contractor difference in price
NC	x	x	x	x	x	Recovery of any excess cost occasioned by default
ND		x		x	x	
OH	x	x	x	x	x	Penalties
OK	x	x	x	x	x	Withhold payment on merchandise received (if any) until settlement is reached
OR	x	x	x	x	x	
PA	x	x		x	x	
RI	x	x	x	x	x	Any other remedies that may be determined as a result of further litigation or court settlement
SC	x	x	x	x	x	Fraud:Legal action.
SD		x		x	x	Court action; buy elsewhere and charge defaulting vendor difference in price
TN	x	x	x	x	x	Damages suffered by State as a result of supplier default; go to open market to obtain items and charge defaulting vendor difference in price
TX	x	x	x	x	x	Penalty per day for late delivery. Difference in bid price and cost of obtaining supplies elsewhere
UT				x	x	Prosecution by Attorney General's Office
VT		x	x	x		Charge defaulting vendor difference in price obtained elsewhere
VA	x	x		x		May purchase from other sources and charge difference to defaulting supplier.
WA	x	x	x	x	x	Condition for reinstatement: vendor must furnish performance bond prior to bidding. Charge defaulting vendor difference in price obtained elsewhere
WV	x	x		x	x	
WI	x	x	x	x	x	Criminal proceedings
WY	x	x	x	x	x	

Q67. What corrective actions can be taken when a using agency fails to order in accordance with, or otherwise fails to comply with, a contract made by central purchasing office?

AL: All of the normal housekeeping corrective actions can be taken and if the vendor collaborates, disciplinary action can be taken against him.

AK: Retract purchase authority; refuse to allow payment; disciplinary action against the responsible individual.

AZ: Written notification to management; loss of purchasing authority.

AR: Purchasing authority may be taken away from using agency resulting in every purchase being initiated from central office.

CA: Using agencies must order items which are on contract. If an agency purchases another similar item off contract, the person responsible is liable for payment of any extra cost.

CO: Dept. head and the employee actually making purchase are held personally liable for the costs and may be prosecuted.

CT: Removal of all purchasing authority for a given period of time. Holding the fiscal head of the agency responsible for payment of illegal or unauthorized purchases (this may be recovered in court action)

DE: None. The Division of Purchasing has no authority for enforcement since use of our contracts is not mandatory except for the Executive Branch.

FL: 287.042(8) states the Comptroller shall not approve any account nor direct any payment for the purchase of any commodity except as authorized by the Division.

GA: Removal of field authority to purchase; State auditor will cite the closing audit and may disallow the purchase thereby requiring return of the goods or personal payment by the offending employee; Request to agency for discharge or appropriate discipline of employee. All year-end audits are provided to members of the General Assembly--Committees investigate as a matter of course.

HI: Withhold payment to vendor, reprimand agency.

ID: Purchasing authority may be reduced or taken away.

IL: Procurement Services would notify the appropriate officers of the agency and that person would be subject to appropriate discipline.

IN: The central purchasing office reviews and approves all purchasing done by the agencies and institutions before payment is made. An improper purchase can be rejected leaving the agencies liable for payment. This process and the agencies' awareness of the possiblity of rejection keeps the agencies in line with proper purchasing procedures.

IA: Charge the responsible individual; remove the abused privilege from the agency.

KS: In all cases of non-compliance, the agency is notified by the Director of Purchases or the Director of the Division of Accounts and Reports who

issues warrants for all agency payments, and compliance is requested. When flagrant non-compliance exists, the Division of Accounts and Reports will reject agency payment vouchers The agency then is forced to apply to the Legislative Claims and Accounts Committee with an explanation of its actions and a request for authority to pay the outstanding account(s).

KY: Administrative action; personal liability; restriction of further purchasing; reprimand.

LA: Publicity; Administrative pressure; Alteration of Reduction of Delegated Authority.

MA: Report it to the proper authority in the agency. If this fails to remedy the situation, report the matter to the Office of Administration and Finance.

ME: Note of reprimand; Department head can be made to pay for unauthorized purchases within his/her department by statute.

MD: Rescind delegated purchase authority from the offending agency and require them to requisition through the central purchasing office.

MI: Management actions; control of other or future purchases.

MN: Delegation of authority may be rescinded.

MS: Payment is refused; merchandise is returned and proper procedures are followed.

MO: Rescind authority - Department Directors could be held responsible for payment by statute.

MT: Written notification of lack of compliance may be directed to the Agency. The Agency may be required to provide written documentation explaining the reason for the violation.

NV: The head of the using agency and the employee who actually made such purchase or entered into such contract shall be personally liable for the costs of any supplies, materials or equipment delivered pursuant to such purchase or contract.

NE: Purchasing can notify accounting not to issue vouchers.

NH: Comptroller may hold individual personally responsible. Letter of warning from Director of Purchasing.

NJ: Non-compliance by using agencies is brought to the attention of that particular agency's head for appropriate action. Central purchasing has no legal authority over employees of a particular agency. If a case involves corruption or fraud, the matter is brought to the attention of the Office of Attorney General.

NM: Payment is delayed until user is able to justify the purchase or the product is returned.

NY: If ordering outside the contract, the State Comptroller's Office can reject the agency's purchase order and instruct that the order should instead be placed against the contract. If an agency fails to meet

contractual obligation to order, action can be withheld on their request for future purchases. If it appears illegal acts have been committed, appropriate authorities will be notified.

NC: Executive officer of department is personally liable for the costs thereof.

ND: The Office of Management and Budget reviews and authorizes all vouchers for payment. Agencies failing to comply are contacted at that time. Payment may be interrupted.

OH: They are warned to stop it at once. The system is such that institutions and/or agencies are very cautious.

OK: Contact agency. Director and vendor who sold merchandise are held responsible.

OR: Review abuse with violating agency. Submit written report of review to agency's top management and, if warranted, to state auditor.

PA: The only recourse at this time would be disciplinary action.

RI: Contractual matters are the responsibility of the central purchasing office and reflect the commitment in behalf of the using agency. Administrative actions to settle any discrepancies between the agency and the contracting office may result in enforcement, modification or termination of contract as may be in the best interest of the state.

SC: A letter is dispatched to the agency director with a copy to the governing board of the agency (titled the Budget and Control Board). The agency is also subject to law suit by the successful contractor for loss of profit under contract. Reduction in certification and purchasing authority by Division of General Services.

TN: Agency personnel responsible for the abuse can be held accountable and personally liable; state auditor may intervene and take disciplinary action against employee or recommend disciplinary action be taken by employee's appointing authority. Removal of agency purchase authority.

TX: Do not approve the invoice for payment; in lieu of this, would request and expect some action be taken by the Attorney General's Office against the offending agency.

UT: Dismissal (possibility); or personal liability for the item cost.

VT: Non-delivery.

VA: Withdrawal of whatever purchasing authority they have been delegated; report problem to Governor's Office.

WA: Letter of reprimand with carbon copy to Auditor.

WV: Payment for the items will not be approved and the head of the Agency may be personally liable.

WI: Revocation of delegation.

WY: Letters of reprimand from purchasing and/or Governor. Refusal to honor contract.

Q68. What corrective actions can be taken when a using agency exhibits undue preference for a particular supplier?

AL: Usually the specs are reviewed and corrected at that point.

AK: Any action central purchasing desires.

AZ: Written notification to management; loss of purchasing authority.

AR: The Office of State Purchasing is available for training agency purchasing personnel.

CA: Withdraw their purchase delegation and thus limt them to $100 per transaction.

CO: Corrective actions are not necessary. The Division of Purchasing does not bow to such pressures.

CT: Removal of all direct purchasing authority for a given period of time. Holding the fiscal head of the agency responsible for payment of illegal or unauthorized purchases. (This may be recovered in a court action.)

DE: They can't.

FL: This would have to be noted by the legislative auditor during scheduled audits of all state agencies at which time it would be reported to the Governor and the leadership of both houses.

GA: Removal of delegated authority; frequent comprehensive audits by central purchasing with copies to state auditor

HI: Bring to agency's attention with recommendation that practice should be discontinued. If product is under contract--withhold payment, reprimand agency.

ID: Any public employee violating section 59-1026 shall be liable for civil penalties not to exceed $500 for each offense.

IL: The only opportunity for preference is in the delegated purchasing authority. In these instances, our Procurement Inspectors audit the authorization for compliance with single purchase limitations and other conditions imposed on the delegated authority, including preference for a particular supplier. The audit of authorization is reviewed by the Assistant Deputy Director and any non-compliant condition is brought to the attention of the appropriate agency official. If corrective action is not taken authorization privileges may be withdrawn or reduced.

IN: The buyers in the central purchasing office have the responsibility for sending Invitations to Bid using an Approved Bidders List. For purchases under $500, the agencies may send quotes from desired vendors with their requisitions. The buyer has the discretion of obtaining additional quotes or buying on the quote the agency submitted.

IA: Conference with agency head to explain appearances and requirement for competition; investigate circumstances; pressure from Executive Council, public opinion.

KS: This question obviously refers to multiple award contracts which Kansas does not use. (Otherwise, when products have been certified for use, agencies are expected to use them. Appeal is possible but must be in writing so that it can be thoroughly reviewed by Division of Purchases and, if necessary, Attorney General.)

KY: Final authority rests with the Department of Finance in all matters of Procurement; if any preference cannot be supported or is recognized as only preference, agencies are directed that such preference must cease.

LA: Administrative pressure (letter of reprimand); publicity; audit operation; Ethics Commission.

ME: Note of reprimand; Department head can be made to pay for unauthorized purchases within his/her department by statute.

MD: Rescind the $500 Direct Purchase Exemption granted by the by the Department of General Services.

MA: Hold a hearing before the Purchasing Agent and a representative from the Attorney General's Office.

MI: Withdrawal of delegated procurement authority.

MN: Delegation of authority may be rescinded.

MS: The audit department is requested to and does make an extensive investigation into the practice.

MO: Rescind $500 direct purchase order authority. All purchases over $500 are the responsibility of central purchasing, which has the authority and responsibility of revising specifications to eliminate unnecessary requirements that restrict competitive bidding.

MT: The Central Purchasing Office has the authority to revise an agency's requirements in order to allow for competitive awards.

NV: Purchasing has final authority for specification. We require broad coverage on items we authorize for direct purchase.

NM: The user agency and the vendor are both put on notice. Provided, however, that using agency can justify that performance will be restricted.

NE: No response.

NJ: The Director of the Division of Purchase and Property may revoke the agency's authority to purchase directly. Other purchasing transactions are handled by the central purchasing office and are subject to competitive bids. The department head is also notified by centralized purchasing so that appropriate action may be taken against the individual involved.

NH: Refuse to purchase.

NY: If the purchase order is subject to approval by this office, the purchasing agent that reviews the bid documents which must accompany the order can reject the order and advise the agency to take corrective

action. If the order is subject only to approval by the Comptroller's office, his staff can reject the order and mandate that it be rebid by the using agency or the central procurement office.

ND: Communication between the Purchasing Division and agency regarding state laws, availability of other products and, if apparent violation of law, the Attorney General's offices assists.

OH: They are not allowed to do this unless there is a sale/service item that does not require competitive bidding.

OK: Single award, make agency justify in writing.

OR: Meet with agency in attempt to restructure their request in terms of performance required to fulfill the need. Refuse to acquire item until specifications are developed which will permit competition.

PA: A letter of reprimand can be issued and, if it continues, further disciplinary action could be taken.

RI: Sufficient consideration is given to the needs and desires of the using agency by the central purchasing office. These requirements are then interpreted to buying actions within the existing rules and regulations, which are made known to all requisitioners. All purchase actions, regardless of total value, are reviewed and approved by the purchasing division and abuses of purchase authorizations evidenced in these reviews could result in administrative action to correct the deficiencies or the maximum penalty of withdrawal of their small purchase authority.

SC: A report is filed with the Budget and Control Board as the governing body of the agency. Reduction in certification and purchase authority.

SD: Very little if the agency can make some kind of case.

TN: Agency personnel responsible for the abuse can be held accountable and personally liable. State auditor may intervene and take disciplinary action against employee or recommend disciplinary action be taken by employee's appointing authority. Removal of agency purchase authority.

TX: Refuse to process the purchase document; or require written justification for sole source purchases be signed by highest authority at using agency; or allow purchase and provide for "protest" letter to be written by purchasing to proper authority noting exception to purchase without benefit of competition.

UT: Meeting with Director of agency and bidder, possible budget office. May loose purchasing authority.

VT: Delegation removed.

VA: Withdrawal of whatever purchasing authority they have been delegated. Report to Governor's Office.

WA: May express preference, but the State Purchasing Division will still seek competition.

WV: The authority to purchase can be removed.

WI: Revocation of delegation.

WY: Letters of reprimand from Purchasing and/or Governor; refusal to honor contract.

Q71. Do you maintain records of the overall dollar volume of purchases made under definite quantity contracts, indefinite quantity contracts, and multiple award contracts?

Q73. Compared to the total volume of items purchased by the State, has the proportion of items purchased under multiple award contracts increased, decreased, or stayed about the same since FY 1974?

Q74. Compared to the total dollar volume of State purchases, has the proportion of dollars spent under multiple award contracts increased, decreased, or stayed about the same since FY 1974?

	Q71		Q73			Q74		
	YES	NO	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME
AL		x			x			x
AK		x	x			x		
AZ		x			x			x
AR		x			x			x
CA	x							
CO		x						
CT	x				x	x		
DE		x	x			x		
FL	x				x			x
GA	x			x			x	
HI		x		x			x	
ID		x			x			x
IL	x				x			x
IN	x			x			x	
IA		x			x			x
KS		x						
KY	x		x			x		
LA	x			x			x	
ME		x	x			x		
MD	x			x			x	
MA		x	x			x		
MI		x						
MN	x							
MS		x	x			x		
MO		x						
MT		x						
NE		x	x					x
NV		x						
NH		x			x			x
NJ	x			x			x	
NM		x	x			x		
NY	x*			x			x	
NC		x		x			x	
ND		x						
OH	x				x			x
OK	x			x			x	
OR		x		x			x	
PA		x	x			x		
RI		x						
SC	x				x			x
SD		x						
TN		x		x			x	

	Q71		Q73			Q74		
	YES	NO	INCREASED	DECREASED	SAME	INCREASED	DECREASED	SAME
TX	x			x			x	
UT		x		x				x
VT	x							
VA	x				x			x
WA		x						
WV		x			x			x
WI	x			x			x	
WY		x		x			x	

*We obtain some reports from vendors; also, the State Comptroller's Office provides us with quarterly computer printouts on state contracts purchases. It is difficult to obtain an accurate reading on the dollar amount of political subdivisions and other eligible non-state agency purchases. There are several thousand eligible to participate. (NOTE: Questions 69, 70, 72, 75 are omitted. Dollars required for these questions could not be updated.)

APPENDIX A-2

Survey of Additional Purchases Practices of State Governments

National Association of State Purchasing Officials

August 1981

A survey of varied purchasing practices of the 50 state governemnts conducted in August, 1981 by the Council of State Governments to obtain information supplementing that given in Appendix A.

Q1. Title of official with statutory responsibility for central purchasing (e.g., Director of Administration)

State	Title
AL	Director of Finance
AK	Commissioner of Administration
AZ	Assistant Director of Administration for Finance
AR	Director of Finance and Administration
CA	Director of General Services
CO	Executive Director, Department of Administration
CT	Commissioner of Administrative Services
DE	Secretary of Administrative Services
FL	Executive Director, Department of General Services
GA	Commissioner, Department of Administration
HI	State Comptroller
ID	Director, Department of Administration
IL	Director of Administrative Services
IN	Commissioner of Administration
IA	Director of General Services
KS	Director of Purchasing
KY	Secretary of Finance
LA	Commissioner of Administration
ME	State Purchasing Agent
MD	Secretary, Department of General Services
MA	State Purchasing Agent
MI	Director of Management and Budget
MN	Commissioner of Administration
MS	Director, Commission of Budget & Accounting
MO	Commissioner of Administration
MT	Director, Department of Administration
NE	Material Administrator
NV	Administrator, State Purchasing Division
NH	State Comptroller
NJ	Director, Division of Purchasing & Property
NM	State Purchasing Director
NY	Commissioner of General Services
NC	Secretary of Administration
ND	Director, Office of Management and Budget
OH	State Purchasing Agent
OK	Director of Purchasing
OR	Director, Department of General Services
PA	Secretary, Deptartment of General Services
RI	Director of Administration
SC	Director, Division of General Services
SD	Commissioner, Bureau of Administration
TN	Director of Purchases
TX	Executive Director, State Purchasing & Gen. Serv. Commission
UT	Director, Department of Administrative Services
VT	Secretary of Admininistration
VA	Director, Division of Purchases & Supply
WA	Director, Purchasing & Material Control
WV	Commissioner, Department of Finance and Administration
WI	Secretary, Department of Administration
WY	Administrator, Division of Purchasing & Property Control

Q2. Title of person responsible for daily operation of the central purchasing office (e.g., State Purchasing Offical).

State	Statute	Rule or Reg.	Operating Procedure	Title
AL	X			State Purchasing Agent
AK		X		Director of General Services & Supply
AZ				State Purchasing Administrator
AR				Director of Office of State Purchasing
CA			X	Chief of Procurement
CO	X			State Purchasing Director
CT				Deputy Commissioner of Purchases
DE	X			Director, Division of Purchases
FL				Director, Division of Purchasing
GA				Director of Purchasing
HI			X	Chief, Purchasing & Supply Division
ID				Administrator, Division of Purchasing
IL			X	Assistant Deputy Director, Procurement Services
IN	X			Director of Procurement Division
IA				Chief Purchasing Officer
KS				Director of Purchasing
KY				Director of Purchases
LA	X			Director of State Purchasing
ME	X			State Purchasing Agent
MD				Chief, Purchasing Bureau
MA	X			Purchasing Agent
MI				Director of Management and Budget
MN				Director of Procurement
MS				Supervisor, Division of Purchase
MO			X	Director of Purchasing
MT			X	Administrator, Purchasing Division
NE				Director of Purchasing
NV				Administrator, State Purchasing Division
NH	X			Director, Division of Purchase and Property
NJ				Supervisor, Purchase Bureau
NM				Director, Purchasing Division
NY				Director, Standards & Purchase Group
NC		X		State Purchasing Official
ND			X	State Purchasing Agent
OH			X	Manager of Procurements
OK		X		Director of Purchasing
OR			X	Administrator, Purchasing Division
PA				Director, Bureau of Purchases
RI				State Purchasing Agent
SC				State Purchasing Official
SD				Director, Purchasing & Printing
TN				Assistant Commissioner for Procurement
TX			X	Director of Purchasing
UT				Chief Procurement Officer
VT				Purchasing Director
VA				Assistant Director, Procurement
WA	X			Director, Purchasing & Material Control
WV	X			Purchasing Director
WI			X	Director, State Bureau of Procurement
WY			X	State Program Manager, Division of Purchasing and Property Control

Q3. Name of body or title of individual who prescribes purchasing rules and regulations (e.g., Board of Public Affairs; Commissioner of General Services)

State	Statute	Rule or Reg.	Operating Procedure	Title
AL	X			Director of Finance
AK		X		Director of General Services & Supply
AZ				Director, Department of Administration
AR				Director of Office of State Purchasing
CA	X	X		Director of General Services
CO	X			Director, Department of Administration
CT				Commissioner, Bureau of Purchases
DE	X			Secretary of Administrative Services
FL				Board of Department of General Services
GA				Director of Purchasing
HI	X			Governor
ID				Director, Department of Administration
IL	X			Director Department of Administration
IN	X			Commissioner, Department of Administration
IA				Director of General Services
KS				Secretary, Department of Administration
KY				Secretary, Department of Finance
LA	X			Commissioner of Administration
ME	X			State Purchasing Agent
MD				Board of Public Works
MA			X	State Purchasing Agent
MI				Director, Department of Management and Budget
MN				Commissioner, Department of Administration
MS				Supervisor, Division of Purchase
MO	X			Commissioner of Administration
MT	X			Director, Department of Administration
NE	X			Director, Department of Administrative Services
NV				Director, Department of General Services
NH	X			Director, Division of Purchase and Property
NJ				Director, Division of Purchase and Property or State Treasurer
NM				Director, State Purchasing Division
NY				Commissioner of General Services
NC	X			Advisory Budget Commission
ND	X			Director Office of Management and Budget
OH		X		Administrator, Purchasing Office
OK	X			State Board of Public Affairs
OR	X	X		Public Contract Review Board
PA	X			Secretary, Department of General Services
RI				State Purchasing Agent
SC				Budget and Control Board
SD				Director, Purchasing & Printing
TN				Board of Standards
TX	X			State Purchasing and General Services Commission
UT				Policy Board
VT				Purchasing Director
VA				Director, Division of Purchases and Supply

State	Statute	Rule or Reg.	Operating Procedure	Title
WA	X			Director, Purchasing & Material Control
WV	X	X		Commissioner, Finance and Administration
WI	X			Director, State Bureau of Procurement
WY	X			Administrator Div. of Purchasing & Property Control

Q4. Is there a trend toward more or less centralization in your State of policy matters governing purchasing and contracting?

	More	Less	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL	X						X
AK	X	X					X
AZ			X				
AR		X			X		
CA	X				X	X	
CO	X				X	X	
CT		X					
DE	X						
FL	X				X		
GA	X					X	
HI	X						
ID			X				
IL		X					X
IN	X						
IA			X				
KS		X					
KY		X					
LA	X					X	X
ME	X						
MD	X				X	X	
MA	X						X
MI	X						
MN			X				
MS	X						
MO	X						X
MT			X				
NE	X						X
NV			X				
NH	X						
NJ	X				X		X
NM	X						
NY	X				X		
NC	X						
ND		X					X
OH	X						
OK	X				X		
OR		X					
PA	X						
RI	X						
SC		X					
SD	X						
TN	X				X		
TX	X						
UT	X						
VT	X						X
VA	X				X		
WA	X				X		
WV	X				X		
WI	X						
WY	X				X		

Q5. Does central purchasing have authority to send back purchase requisitions on the basis of need or quality?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X			X	
AZ		X			X	
AR	X					
CA		X	X			
CO		X	X	X		
CT		X		X		
DE	X					
FL		X		X		
GA	X					
HI	X					
ID		X	X			
IL					X	
IN		X				
IA		X	X	X		
KS	X					
KY		X				
LA	X		X	X		
ME		X	X			
MD		X			X	
MA		X			X	
MI	X					
MN	X					
MS		X			X	
MO		X	X			
MT		X	X			
NE	X	X				NO, need; YES, quality
NV		X	X			
NH		X				
NJ	X					
NM		X				
NY		X	X			Also, opinions of Attorney General
NC		X	X			
ND		X			X	Quality
OH		X		X		
OK		X				Legislature studying this now
OR		X				
PA	X					
RI		X	X			
SC	X					
SD		X	X			
TN		X	X			
TX	X					
UT		X				
VT	X					
VA		X			X	
WA		X				
WV		X		X		
WI		X				
WY	X					

Q6. Are conditions under which competitive bidding may be waived set forth in writing?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X	X			
AZ		X				No authority for waiver except for professional services
AR		X	X			
CA		X	X	X		
CO		X	X	X		
CT		X	X			
DE		X	X			
FL		X	X	X		
GA		X		X		
HI		X				Limited to Sole Source
ID		v	v			
IL		X	X	X		
IN		X	X			
IA		X	X	X		
KS		X	X			
KY		X				
LA		X	X	X		
ME		X	X			
MD		X	X	X		
MA		X			X	
MI		X			X	Partially
MN		X		X		
MS		X	X			
MO		X			X	
MT		X	X			
NE		X	X			
NV		X	X			
NH		X	X			
NJ		X	X			
NM		X	X			
NY		X	X			Also opinions of Attorney General
NC		X	X			
ND		X	X			
OH		X		X		
OK		X	X			
OR		X	X	X		
PA		X	X			
RI		X			X	
SC		X	X			
SD		X	X			
TN		X		X		Sole source only
TX		X	X			
UT		X		X		
VT	X					
VA		X			X	
WA		X	X			
WV		X		X		
WI		X	X			
WY		X	X			

Q7. Is there an established format for reporting non-competitive bidding or practices to the Attorney General?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X			X	
AZ	X					
AR		X	X			
CA		X			X	Identical bids reported to Attorney General in Washington
CO		X	X			
CT	X					
DE		X			X	
FL		X		X		
GA	X					
HI	X					
ID	X					
IL		X		X		
IN		X	X			
IA	X				X	Informal
KS	X					
KY		X	X			Annual to Legislature
LA		X			X	
ME	X					
MD		X	X	X		
MA		X			X	
MI		X			X	
MN	X					
MS	X					
MO	X				X	
MT	X					
NE	X					
NV		X			X	
NH	X					
NJ		X		X		
NM		X				
NY		X			X	identical bid reports filed with state and federal attorney general
NC		X		X		
ND	X			X	X	
OH	X					
OK	X					
OR		X		X		
PA		X		X		
RI	X					informal only
SC		X	X			
SD	X					
TN	X					
TX		X			X	
UT	X					
VT	X					
VA		X			X	
WA	X					
WV		X			X	
WI	X					
WY	X					

Q8. Are there statutory or regulatory provisions authorizing confidentiality of certain types of information or data?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL	X					
AK	X					
AZ		X		X		
AR		X	X			
CA		X		X		
CO		X		X		
CT	X					
DE		X	X			
FL	X					
GA	X					
HI	X					
ID		X		X		
IL	X					
IN		X	X	X		
IA		X	X			
KS	X					
KY		X	X			
LA	X		X			
ME		X		X		
MD		X	X	X		
MA		X	X			
MI		X	X	X		
MN	X					
MS	X					
MO	X					
MT	X					
NE	X					
NV		X		X		
NH	X					
NJ	X					
NM		X	X			
NY		X	X		X	
NC		X	X			
ND	X					
OH		X			X	
OK	X					
OR	X					
PA	X					
RI	X					
SC		X	X			
SD	X					
TN		X		X		
TX		X	X			
UT		X		X		
VT	X					
VA		X		X		
WA	X	X	X			YES-Statutory; NO-Regulatory
WV		X		X		
WI		X			X	
WY	X					

Q9. Are agencies required to furnish inventory and usage data to central purchasing upon request?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK	X					
AZ		X		X		
AR		X	X			
CA		X		X		
CO		X	X		X	
CT		X			X	
DE	X					
FL		X		X		
GA	X					
HI	X					
ID		X	X			
IL	X					
IN		X	X			
IA		X			X	
KS		X	X		X	
KY		X	X			
LA		X	X	X		
ME		X	X			
MD		X				Furnished to Inventory Management Division by agencies. Inventory Management Division is separate from Purchasing.
MA		X			X	
MI		X			X	
MN	X					
MS		X			X	
MO		X	X			
MT		X	X			
NE		X			X	
NV		X	X			
NH		X			X	
NJ		X		X		
NM		X	X			
NY		X	X			
NC		X	X			
ND		X			X	
OH		X			X	
OK	X					
OR		X		X		
PA	X					
RI		X			X	
SC		X	X			
SD	X		X			
TN		X	X			
TX		X	X			
UT		X			X	
VT		X			X	
VA		X			X	
WA		X				
WV		X			X	
WI		X				
WY		X			X	

Q10. Does central purchasing have authority for acquiring, or approving contracts for, professional services required by other state agencies? Any such contracts? All such contracts? (*Denotes response for "all such contracts.")

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ	X					
AR	X		X			
CA		X	X	X		Any such contracts - Only for EDP Acquisition
CO		X	X	X		
CT	X					
DE		X	X			
FL		X	X	X		
GA		X	X			
HI		X				
ID		X	X			
IL	X					
IN		X	X			
IA		X			X	Informal
KS		X*	X			All but engineers & architects
KY		X	X	X		
LA	X					
ME		X	X			
MD	X					
MA	X					
MI		X	X			
MN		X	X			
MS	X					
MO	X*	X	X			
MT	X					
NE	X					
NV	X					
NH	X					
NJ		X	X			
NM		X			X	
NY	X					
NC		X	X			
ND	X		X			
OH	X					
OK	X					Do issue purchase orders
OR		X	X	X		Architectural, engineering, & trade services only
PA	X*	X	X			
RI		X	X			
SC		X	X			
SD	X*	X			X	
TN	X		X			
TX	X					
UT		X*		X		
VT	X					
VA	X					
WA	X					
WV		X			X	
WI		X*	X			
WY		X*	X			

Q11. Does central purchasing have or is it actively developing a computerized "Purchasing Management Information System;" that is, the use of ADP data for planning, scheduling, and helping make management decisions?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ		X				
AR		X				
CA		X			X	
CO	X					
CT		X			X	
DE		X				
FL		X	X		X	
GA		X				
HI	X					
ID		X			X	
IL	X					
IN	X					
IA	X					
KS	X					
KY	X					
LA		X			X	
ME		X				
MD		X			X	
MA		X			X	
MI		X			X	
MN	X					
MS		X				
MO	X					
MT	X					
NE	X					
NV		X				
NH	X					
NJ		X		X		
NM		X			X	
NY		X				Funding must be appropriated
NC		X			X	
ND	X					
OH		X			X	
OK		X			X	
OR		X			X	
PA	X					
RI	X					
SC		X	X			
SD	X					
TN		X				
TX		X			X	
UT		X			X	
VT	X					
VA		X			X	
WA		X			X	
WV	X					
WI		X			X	
WY	X					

Q12. Are annual or term contracts staggered for expiration and rebidding so as to spread the work over the calendar years?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X			X
AK		X			X
AZ		X			
AR	X				X
CA		X			X
CO		X			
CT		X			X
DE		X			X
FL		X			X
GA		X			
HI		X			
ID		X			X
IL		X			X
IN		X			X
IA		X			X
KS		X			X
KY		X			
LA		X		X	X
ME		X			
MD		X			X
MA		X			X
MI		X			X
MN		X			
MS		X			
MO		X			X
MT		X		X	
NE		X			X
NV		X			
NH		X			X
NJ		X		X	
NM		X			X
NY		X			X
NC		X			X
ND		X			X
OH		X			X
OK		X			X
OR		X			X
PA		X			X
RI		X			X
SC		X			X
SD		X			X
TN		X			X
TX		X			X
UT	X				X
VT		X			X
VA		X			X
WA		X			
WV		X			X
WI		X			X
WY	X				

Q13. Is there a written procedure for holding pre-bid conferences?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL	X				
AK	X				
AZ	X				
AR		X		X	X
CA		X		X	
CO	X				
CT	X				
DE		X	X		
FL		X			X
GA		X			
HI	X				
ID		X			X
IL		X			X
IN	X				
IA	X				
KS	X				
KY		X			X
LA	X				
ME	X				
MD		X	X	X	
MA	X				
MI	X				
MN	X				
MS		X			X
MO		X			X
MT	X				
NE	X				
NV	X				
NH	X				
NJ	X				
NM	X				X
NY	X				
NC	X				
ND	X				
OH	X				X
OK	X				
OR	X				
PA	X				
RI	X				
SC		X			X
SD		X			X
TN	X				X
TX	X				
UT	X				
VT	X				
VA		X			X
WA		X		X	
WV	X				
WI	X				
WY	X				

Q14. Are there written criteria for including applicants on bidders' lists?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X		X	
AK		X	X			
AZ		X			X	
AR		X	X			
CA		X		X		
CO	X					
CT		X			X	
DE		X			X	
FL		X		X		
GA		X		X		
HI	X					
ID		X	X	X		
IL		X		X	X	
IN	X					
IA		X		X		
KS		X	X			
KY		X		X		
LA	X					
ME		X				
MD		X			X	
MA		X			X	
MI		X				
MN		X	X	X		
MS		X		X		
MO		X			X	
MT		X	X			
NE	X					
NV		X			X	
NH		X			X	
NJ	X					
NM		X	X			
NY		X			X	
NC		X			X	
ND		X		X		
OH		X	X			
OK		X		X		
OR		X			X	
PA	X					
RI		X				General specifications for all quotations & contracts
SC	X					
SD	X					
TN		X	X			
TX		X	X			
UT	X					
VT	X					
VA		X		X		
WA		X		X		
WV		X			X	
WI		X			X	
WY		X		X		

Q14a. Are there written criteria for suspending or debarring bidders from the lists?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X		X	
AK	X					
AZ	X					
AR		X	X			
CA		X		X		
CO		X	X			
CT		X			X	
DE	X					
FL		X		X		
GA		X		X		
HI	X					
ID		X	X	X		
IL		X		X	X	
IN	X					
IA		X		X		
KS	X					
KY		X	X	X		
LA		X		X		
ME	X					
MD		X	X	X		
MA	X					
MI		X			X	
MN		X		X		
MS		X		X		
MO	X					
MT	X					
NE		X		X		
NV		X		X		
NH		X			X	
NJ		X			X	
NM		X			X	
NY		X			X	
NC		X			X	
ND		X		X		
OH		X	X			
OK		X		X		
OR		X		X		
PA	X					
RI		X				General specifications for all quotations and contracts
SC		X	X			
SD		X		X		
TN		X		X		
TX		X	X			
UT		X	X			
VT	X					
VA		X		X		
WA		X		X		
WV		X		X		
WI	X					
WY		X		X		

Q15. Does central purchasing have final responsibility for the content of Invitations for Bids?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X	X		X
AK		X			X
AZ		X			X
AR		X	X		
CA		X	X		
CO		X	X		
CT		X	X		
DE		X			
FL		X		X	
GA		X	X		
HI		X			
ID		X	X	X	
IL		X			X
IN		X	X		
IA		X		X	
KS		X	X		
KY		X	X	X	X
LA		X	X	X	X
ME		X			
MD		X	X	X	
MA		X			X
MI		X			X
MN		X			
MS		X		X	
MO		X	X		
MT		X	X		
NE		X		X	
NV		X	X		
NH		X	X		
NJ		X	X		
NM		X	X		
NY		X	X		
NC		X	X		
ND		X		X	
OH		X	X		
OK		X	X	X	X
OR		X			
PA		X	X		
RI		X	X		
SC		X		X	
SD		X	X		X
TN		X	X		
TX		X	X		
UT		X		X	
VT		X			X
VA		X			X
WA		X			
WV		X		X	
WI		X			X
WY		X	X		

Q16. Is two-step or multi-step bidding used?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X			X	
AZ		X			X	
AR		X	X			
CA		X		X		Primarily with EDP acquisitions
CO		X	X	X		
CT		X			X	
DE	X					
FL		X		X		
GA		X				
HI	X					
ID		X	X			
IL		X			X	
IN		X	X			
IA		X			X	
KS	X					
KY	X		X			
LA		X		X	X	
ME		X				On contracts only
MD		X	X	X		
MA		X			X	
MI		X			X	
MN						n/a
MS	X					
MO	X					
MT	X					
NE	X					
NV	X					
NH	X					
NJ		X		X		
NM		X	X			
NY						Only occasionally
NC		X			X	
ND		X				Occasionally
OH						Ohio does unilateral contracting only.
OK		X			X	
OR		X				
PA	X		X			
RI	X					
SC		X	X			
SD		X			X	
TN		X				Infrequent
TX		X			X	
UT		X		X		
VT	X					
VA	X					
WA		X	X			
WV		X			X	
WI		X			X	
WY		X			X	

Q17. Is there a written rule for handling mistakes in bids?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X			X
AK		X			X
AZ	X				
AR		X	X		
CA		X			X
CO		X	X	X	
CT		X		X	
DE	X				X
FL		X		X	
GA		X		X	
HI	X				
ID		X	X		
IL	X		X		
IN		X	X	X	
IA		X		X	
KS	X				
KY		X		X	
LA		X		X	X
ME	X				
MD		X	X	X	X
MA	X				
MI	X				
MN	X				
MS		X		X	
MO		X			X
MT	X				
NE	v				
NV	X				X
NH		X		X	
NJ		X			X
NM	X				X
NY		X			X
NC		X		X	
ND		X		X	
OH		X			X
OK		X		X	
OR		X			X
PA		X		X	
RI	X				
SC		X	X		
SD	X				
TN		X	X		
TX		X		X	
UT		X		X	
VT	X				
VA		X			X
WA		X		X	
WV		X			X
WI		X			X
WY		X			

Q18. Are special efforts made to keep Invitations for Bids simple and easy to respond to?

	No	Yes
AL		X
AK		X
AZ		X
AR		X
CA		X
CO		X
CT		X
DE		X
FL		X
GA		X
HI		X
ID		X
IL		X
IN		X
IA		X
KS		X
KY		X
LA		X
ME		X
MD		X
MA		X
MI		X
MN		X
MS		X
MO		X
MT		X
NE		X
NV		X
NH		X
NJ		X
NM		X
NY	X	
NC		X
ND		X
OH		X
OK		X
OR		X
PA		X
RI		X
SC		X
SD		X
TN		X
TX		X
UT		X
VT		X
VA		X
WA		X
WV		X
WI		X
WY		X

Q19. Is documentation required of the reason(s) for waiving competitive bidding?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK		X		X		
AZ		X			X	
AR		X	X			
CA		X	X	X		
CO		X	X			
CT		X			X	
DE		X	X			
FL		X		X		
GA		X				
HI		X				
ID		X			X	
IL		X			X	
IN		X	X	X		
IA		X		X		
KS		X			X	
KY		X	X	X	X	
LA		X	X	X		
ME		X				
MD		X	X	X		
MA		X			X	
MI		X				
MN		X		X		
MS		X				
MO		X			X	
MT		X		X		
NE		X				
NV	X					
NH		X		X		
NJ		X	X	X		
NM		X			X	
NY		X	X		X	
NC		X		X		
ND		X	X			
OH		X	X			
OK		X	X	X		
OR		X	X			
PA		X			X	
RI		X				
SC		X	X			
SD		X	X			
TN		X				Sole source purchases
TX		X	X			
UT		X		X		
VT	X					
VA		X			X	
WA		X		X		
WV		X		X		
WI		X	X			
WY		X			X	

Q20. Are there written procedures for handling sole source purchases?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK		X			X	
AZ		X			X	
AR		X	X			
CA		X	X	X		
CO		X	X			
CT		X	X			
DE		X	X			
FL		X	X	X		
GA		X		X		
HI		X				
ID		X		X		
IL		X	X			
IN		X	X	X		
IA		X		X		
KS		X			X	
KY		X	X	X		
LA		X	X	X		
ME		X				
MD		X	X	X		
MA	X					
MI		X			X	Under $400 only
MN		X		X		
MS		X	X			
MO		X			X	
MT		X		X		
NE		X	X			
NV		X	X			
NH		X		X		
NJ		X	X	X		
NM		X	X			
NY		X			X	Justification is requested on case by case basis
NC		X		X		
ND		X		X		
OH		X		X		
OK		X	X			
OR		X	X	X		
PA		X		X		
RI	X					
SC		X	X			
SD	X					
TN		X	X			
TX		X			X	
UT		X		X		
VT	X					
VA		X			X	
WA		X		X		
WV		X		X		
WI		X	X			
WY		X	X			

Q20a. Are there written procedures for handling emergency purchases?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X	X		
AK		X		X	
AZ		X			X
AR		X	X		
CA		X	X	X	
CO		X	X	X	
CT		X	X		
DE		X	X		
FL		X	X	X	
GA		X		X	
HI	X				
ID	X				X
IL		X	X		
IN		X	X	X	
IA		X		X	
KS		X			X
KY		X	X	X	
LA		X	X	X	
ME		X			
MD		X	X	X	
MA		X	X		X
MI		X			X
MN		X		X	
MS		X	X		
MO		X			X
MT		X	X		
NE		X			X
NV		X	X		
NH		X		X	
NJ		X	X	X	
NM		X	X		
NY		X			
NC		X	X		
ND		X		X	
OH		X		X	
OK		X		X	
OR		X	X	X	X
PA		X		X	
RI		X			X
SC		X	X		
SD		X	X		
TN		X	X		
TX		X			X
UT		X		X	
VT		X			X
VA		X			X
WA		X		X	
WV		X		X	
WI		X	X		
WY		X	X		

Q21. Is central purchasing involved in reviewing or approving purchases under all unsolicited offers made to agencies responsible to central purchasing?

	No	Yes	Stat.	Rule or Reg.	Operating Procedures	Comments
AL		X	X			
AK	X					
AZ	X					
AR		X	X			
CA		X		X		All except those less than $100
CO		X				Some by delegation
CT		X		X		
DE	X					
FL		X				
GA		X	X			
HI	X					
ID		X			X	
IL	X					
IN		X				
IA	X					
KS	X					
KY		X				
LA		X	X	X		
ME		X				
MD		X	X	X		
MA	X					
MI	X					
MN		X				
MS		X			X	
MO		X	X			
MT		X	X			
NE		X	X		X	
NV		X			X	
NH	X					
NJ		X	X	X		
NM		X			X	
NY	X					Agencies have authority to make some small purchases of non-term contract items locally.
NC		X			X	
ND		X				
OH		X		X		
OK	X					
OR		X	X			
PA	X					
RI		X	X			
SC	X					
SD		X	X			
TN		X	X			
TX	X					
UT		X		X		
VT		X			X	
VA		X			X	
WA		X		X		
WV		X				
WI		X	X			
WY		X		X		

Q22. Can central purchasing authorize waiving competitive bidding for the purchase of an item for experiment, test or trial?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X	X			
AZ	X					
AR		X	X			
CA		X		X		
CO		X		X		
CT	X					
DE	X					
FL		X		X	X	
GA		X	X			
HI	X					
ID		X	X	X		
IL	X					
IN		X			X	
IA		X		X		
KS	X					
KY		X		X		
LA		X	X	X		
ME		X				
MD		X	X	X		
MA		X			X	
MI		X			X	
MN	X					
MS		X				
MO	X					
MT	X					
NE		X	X			
NV		X			X	
NH		X			X	
NJ		X	X	X		
NM		X			X	
NY						Not addressed in statute - purchases of "sole source" newly marketed product for test is not prohibited.
NC		X		X		
ND		X			X	
OH		X		X		
OK		X	X			sole source
OR		X	X			with dollar limitation
PA	X		X			
RI		X			X	
SC		X		X		
SD		X	X			under $2500
TN	X					
TX		X			X	
UT		X		X		
VT		X			X	
VA		X			X	
WA		X	X			
WV		X	X		X	
WI		X	X			
WY		X	X			

Q23. Are there written guidelines for determining bidder responsibility and bid responsiveness?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL	X					
AK	X					
AZ		X			X	
AR		X			X	
CA		X	X	X		
CO		X		X		
CT		X			X	
DE	X					
FL		X		X		
GA		X		X		
HI	X					
ID	X				X	
IL		X			X	
IN		X	X	X		
IA		X		X		
KS	X					
KY		X		X		
LA		X	X	X		
ME		X				
MD		X	X	X		
MA	X					
MI	X					
MN		X	X	X		
MS	X					
MO		X			X	
MT		X				
NE		X		X		
NV		X	X			
NH		X			X	
NJ		X			X	
NM		X	X			
NY		X			X	
NC		X		X		
ND		X		X		
OH		X	X			
OK		X		X		
OR		X			X	
PA	X					
RI		X		X		General specifications
SC		X		X		
SD	X					
TN	X	X				NO-bidder responsibility; YES-bid responsiveness
TX		X	X			
UT		X		X		
VT	X					
VA		X			X	
WA		X	X	X		
WV		X		X		
WI		X			X	
WY		X		X		

Q24. Is purchasing authorized by statute or rule to reject any and all bids, in whole or in part?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X	X		
AK		X	X			
AZ		X	X	X		
AR		X	X			
CA		X	X	X		
CO		X	X			
CT		X	X			
DE		X	X			
FL		X		X		
GA		X	X			
HI		X	X			
ID		X	X	X		
IL	X					
IN		X	X			
IA		X	X			
KS		X	X		X	
KY		X	X	X	X	
LA		X	X	X		
ME		X		X		
MD		X	X	X		
MA		X		X		
MI	X				X	Authorized by procedure
MN		X	X			
MS		X		X		
MO		X	X			
MT		X			X	
NE		X	X			
NV		X	X			
NH	X					
NJ		X	X			
NM		X	X			
NY		X	X			
NC		X	X			
ND		X		X		
OH		X	X			
OK		X	X			By setting rules-methods
OR		X	X			
PA		X	X			
RI		X		X		General specifications
SC		X		X		
SD		X	X			
TN		X	X			
TX		X	X			
UT		X		X		
VT		X	X			
VA		X				
WA		X	X	X		
WV		X	X			
WI		X	X			
WY		X		X		

Q25. In evaluating bids, are you giving more consideration to factors other than initial price?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X	X		
AK		X			X	
AZ		X			X	
AR	X					
CA		X	X	X		
CO		X	X	X		
CT		X			X	
DE		X	X		X	
FL		X	X		X	
GA		X		X		
HI	X					
ID		X	X	X		
IL		X		X	X	
IN		X	X	X		
IA		X		X		
KS		X	X			
KY		X	X	X		
LA	X					
ME	X					
MD		X	X	X		
MA	X					
MI		X			X	
MN		X	X	X		
MS		X			X	
MO		X			X	
MT		X			X	
NE		X			X	
NV		X	X			
NH		X				
NJ		X	X			
NM		X	X			
NY		X	X		X	
NC		X	X			
ND		X			X	
OH		X			X	
OK		X				
OR		X			X	
PA		X	X			
RI		X		X		General specifications
SC		X	X	X		
SD		X			X	
TN		X	X			
TX		X	X			
UT		X		X		
VT		X			X	
VA		X				
WA		X		X	X	
WV		X	X			
WI		X			X	
WY		X	X			

Q26. Do you prohibit any substantive changes in bids following public opening?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ		X			X	
AR		X	X			
CA		X		X		
CO		X				
CT		X	X			
DE		X			X	
FL		X		X		
GA		X		X		
HI	X					
ID		X	X	X		
IL		X			X	
IN		X	X	X		
IA		X		X		
KS		X			X	
KY	X			X		Held to minimum
LA		X		X	X	
ME		X				
MD		X	X	X		
MA		X			X	
MI	X					
MN		X				
MS		X		X		
MO		X			X	
MT	X					
NE	X					
NV		X	X			
NH	X					
NJ		X		X	X	
NM		X			X	
NY		X			X	
NC		X		X		
ND		X		X		
OH	X					
OK		X		X		
OR		X	X			
PA	X		X			
RI		X		X		General specifications
SC		X	X			
SD		X	X			
TN	X		X			
TX		X			X	
UT		X			X	
VT		X			X	
VA		X				
WA		X	X			
WV	X					
WI		X			X	
WY		X			X	

Q27. Are reasons documented when award is made to other than the low price bidder?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X	X		
AK		X			X
AZ		X			X
AR		X	X		
CA		X	X	X	X
CO		X	X	X	
CT		X			X
DE		X	X		
FL		X		X	
GA		X			
HI		X			
ID		X			X
IL		X			X
IN		X			X
IA		X		X	
KS		X			X
KY		X	X	X	
LA		X			X
ME		X			
MD		X	X	X	
MA		X			X
MI		X			X
MN		X		X	
MS		X			X
MO		X			X
MT		X		X	
NE		X			X
NV		X			X
NH		X			
NJ		X		X	X
NM		X	X		
NY		X	X		X
NC		X	X		
ND		X		X	
OH		X		X	
OK		X			X
OR		X			
PA		X		X	
RI		X			X
SC		X		X	
SD		X			X
TN		X			X
TX		X	X		
UT		X			X
VT		X			X
VA		X			
WA		X	X	X	
WV		X		X	
WI		X	X		
WY		X			X

Q28. After opening, do you usually refer bids to the using agency for its review and recommendation?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X			X	
AZ		X			X	
AR	X					
CA	X					
CO		X				Only when felt to be necessary
CT	X					
DE		X			X	
FL	X					
GA	X					
HI		X				
ID		X			X	
IL	X					
IN	X					Sometimes
IA	X				X	Depends on nature of purchase
KS		X			X	
KY		X		X	X	
LA	X					
ME	X					
MD	X				X	Not done routinely, but selectively
MA		X			X	
MI	X					
MN		X				
MS		X			X	
MO	X					
MT	X					
NE		X			X	
NV	X					
NH	X					
NJ		X		X		
NM	X					
NY	X					
NC		X			X	
ND	X					
OH	X				X	
OK	X		X		X	See assistance when needed
OR						n/a
PA	X					
RI	X					
SC		X			X	
SD		X			X	
TN	X				X	
TX	X					
UT	X				X	
VT		X			X	
VA	X					
WA	X					
WV	X					Limited cases
WI	X					
WY	X				X	

Q29. Does central purchasing have written protest and appeals procedures?

	No	Yes	Stat.	Rule or Reg	Operating Procedure	Comments
AL		X		X		
AK		X		X		
AZ	X					
AR		X	X			
CA		X	X	X		
CO		X	X	X		
CT		X			X	
DE	X					
FL		X	X	X		
GA		X		X		
HI	X					
ID		X	X	X		
IL		X		X	X	
IN	X					
IA		X	X	X		
KS	X					
KY		X	X	X		
LA	X					Now being prepared
ME		X				
MD		X	X	X		
MA	X					
MI		X			X	
MN	X					
MS	X					
MO	X					
MT		X			X	
NE	X					
NV		X		X		
NH	X					
NJ		X			X	
NM		X			X	
NY	X					Have informal procedure
NC		X			X	
ND		X		X		
OH	X					
OK		X		X		
OR		X		X		
PA	X					
RI		X		X		General specifications
SC		X	X			
SD	X					
TN		X	X			
TX		X			X	
UT		X	X			
VT	X					
VA		X	X			
WA		X		X		
WV		X		X		
WI		X			X	
WY	X					

Q30. Is there a conflict of interest statute or regulation that applies specifically to the purchasing process? (If yes, please attach a copy.)

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK	X					
AZ		X	X			
AR		X	X			
CA		X		X		
CO	X					Applies to all state employees
CT		X	X			
DE	X					
FL	X					Proposed (statute)
GA		X	X			
HI	X					
ID		X	X	X		
IL		X	X			
IN	X					
IA		X	X			
KS	X					
KY		X	X			
LA	X					
ME	X					
MD		X	X	X		
MA	X					
MI	X					
MN	X					
MS		X				
MO		X				
MT	X					
NE		X			X	
NV	X					
NH		X				
NJ		X				Included in State's Conflict of Interest Law
NM	X					
NY		X	X			Supplemented by administrative policy
NC		X	X			
ND		X				
OH	X		X			
OK		X	X			
OR		X	X		X	
PA	X					
RI	X					
SC		X	X			
SD		X	X			
TN		X	X			
TX		X	X			
UT	X					
VT	X					
VA		X	X			
WA		X	X			
WV		X	X			
WI		X	X			
WY	X					Not specially to purchasing, but applies to all state employees

Q31. Is a contract void, or can central purchasing authorize voiding a contract, that is entered into contrary to statute or rules and regulations?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK	X					
AZ		X		X		
AR		X	X			
CA						
CO		X	X			
CT		X	X			
DE		X	X			
FL		X			X	
GA		X	X			
HI		X				
ID		X	X	X		
IL		X	X			
IN		X	X			
IA		X		X		
KS		X	X			
KY		X	X	X		
LA	X					
ME	X					
MD		X	X	X		
MA		X			X	
MI		X			X	
MN		X		X		
MS		X		X		
MO		X	X			
MT		X	X			
NE		X		X		
NV		X	X			
NH		X				
NJ		X			X	
NM		X			X	
NY						Supplemented by administrative policy
NC		X	X			
ND		X		X		
OH		X		X		
OK		X	X			
OR		X	X			
PA	X					
RI		X	X			
SC		X	X			
SD		X	X			
TN		X	X			
TX		X	X			
UT		X			X	
VT		X			X	
VA		X	X			
WA		X				
WV		X	X			
WI		X	X			
WY		X	X			

Q32. Is there a rule prohibiting the purchasing department from making purchases purchases on behalf of state employees?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X		X	
AK	X				
AZ		X			X
AR		X	X		
CA		X		X	
CO		X		X	
CT	X				
DE		X			X
FL	X				
GA		X	X		
HI	X				
ID		X	X		
IL	X				
IN		X			X
IA		X		X	
KS		X			X
KY		X		X	
LA	X				
ME		X			
MD		X	X		X
MA	X				
MI		X	X		
MN		X	X		
MS	X				
MO		X			X
MT		X	X		
NE		X			X
NV		X			X
NH		X			X
NJ		X	X		
NM		X			X
NY		X			X
NC		X		X	
ND		X	X		
OH	X				X
OK		X	X		X
OR		X	X		X
PA		X		X	
RI	X				
SC		X			X
SD	X				
TN		X			X
TX	X				
UT		X			X
VT		X			X
VA		X		X	
WA		X	X		
WV		X		X	
WI	X				
WY	X				

Q33. Do you think the practice of "back-door selling" interferes with or impairs fair competition?

	No	Yes
AL		X
AK		X
AZ		X
AR		X
CA		X
CO		X
CT		X
DE		X
FL		X
GA		X
HI		X
ID		X
IL		X
IN		X
IA		X
KS		X
KY		X
LA		X
ME		X
MD		X
MA		X
MI		X
MN		X
MS		X
MO		X
MT	X	
NE		X
NV		X
NH		X
NJ		X
NM		X
NY		X
NC		X
ND		X
OH		X
OK		X
OR		X
PA		X
RI		X
SC		X
SD		X
TN		X
TX		X
UT		X
VT		X
VA		X
WA		X
WV		X
WI		X
WY		X

Q34. Does central purchasing have authority to modify or otherwise determine the correctness and suitability of specifications to be included in an Invitation to Bids?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X	X			
AZ		X				
AR		X	X			
CA		X	X	X		
CO		X	X			
CT		X			X	
DE		X			X	
FL		X	X	X		
GA		X	X			
HI		X				
ID		X	X			
IL		X			X	
IN		X	X			
IA		X		X		
KS		X	X			
KY		X				In coordination with the agency
LA		X	X	X		
ME		X				
MD		X	X	X		
MA		X			X	
MI		X			X	
MN		X	X	X		
MS		X		X		
MO		X	X			
MT		X	X			
NE		X	X			
NV		X	X			
NH		X				
NJ		X	X			
NM		X	X			
NY		X	X			
NC		X	X			
ND		X			X	
OH		X	X			
OK		X	X			
OR		X	X		X	
PA		X			X	
RI		X	X			
SC		X	X			
SD		X	X			
TN		X	X			
TX		X	X			
UT		X			X	
VT		X			X	
VA		X	X			
WA		X	X			
WV		X	X			
WI		X	X			
WY		X			X	

Q35. In addition to written specifications, do you find the use of samples, and questionnaires calling for product technical data, valuable in evaluating bidders' offerings?

	No	Yes
AL		X
AK		X
AZ		X
AR		X
CA		X
CO		X
CT		X
DE		X
FL		X
GA		X
HI		X
ID		X
IL		X
IN		X
IA		X
KS		X
KY		X
LA		X
ME		X
MD		X
MA		X
MI		X
MN		X
MS		X
MO		X
MT		X
NE		X
NV		X
NH		X
NJ		X
NM		X
NY		X
NC		X
ND		X
OH		X
OK		X
OR		X
PA		X
RI		X
SC		X
SD		X
TN		X
TX		X
UT		X
VT		X
VA		X
WA		X
WV		X
WI		X
WY		X

Q36. Do you utilize specification advisory committees made of using agency personnel?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ		X				
AR	X					
CA		X			X	
CO		X				
CT		X	X			
DE	X					
FL		X		X		
GA		X				
HI		X				
ID		X	X		X	
IL	X					
IN	X					
IA		X			X	
KS		X			X	
KY		X	X	X		
LA		X			X	
ME		X				
MD		X				
MA		X			X	
MI		X			X	
MN		X				
MS	X					
MO		X	X			
MT		X		X		
NE		X			X	
NV	X					
NH	X					
NJ		X		X		
NM		X				
NY		X				
NC		X			X	
ND		X			X	
OH		X				
OK		X			X	
OR		X	X		X	
PA		X			X	
RI		X			X	
SC		X	X			
SD		X	X			
TN		X			X	
TX		X			X	
UT		X			X	Some
VT	X					
VA		X			X	
WA		X				
WV		X			X	
WI		X			X	
WY		X			X	

Q37. In developing standard specifications or qualified products lists, do you circularize drafts for industry review and comment?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ		X			X	
AR		X				
CA		X			X	
CO	X					In a few cases
CT		X			X	
DE	X					
FL		X			X	
GA		X				
HI		X				
ID		X			X	Some
IL		X			X	
IN	X					
IA		X			X	
KS	X					
KY		X		X		
LA		v			X	
ME	v					
MD		X				
MA	X					
MI	X					
MN		X				
MS		X		X		
MO		X			X	
MT		X		X		
NE	X					
NV	X					
NH		X				
NJ		X		X		
NM		X			X	
NY		X			X	If deemed necessary or desirable
NC		X			X	
ND		X			X	
OH		X			X	
OK		X			X	
OR		X				
PA		X			X	
RI		X				
SC		X			X	
SD	X					
TN		X				Limited
TX		X			X	
UT	X					
VT		X			X	
VA		X			X	
WA		X				
WV		X			X	
WI		X				
WY		X			X	

Q38. Has central purchasing developed an inspection manual, or similar set of guidelines?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ	X					
AR	X					
CA		X			X	
CO	X					
CT		X			X	
DE	X					
FL		X		X		
GA	X					
HI	X					
ID		X			X	
IL		X			X	
IN		X			X	
IA		X			X	
KS	X					
KY		X			X	
LA		X			X	
ME	X					
MD		X	X	X	X	
MA	X					
MI		X			X	
MN		X				
MS	X					
MO		X				
MT	X					
NE		X		X		Vendor's manual
NV	X					
NH		X		X		
NJ		X		X		
NM	X					
NY		X				Current guidelines are in process of being revised and expanded.
NC		X			X	
ND		X			X	
OH	X					
OK	X					
OR		X			X	
PA		X			X	
RI		X			X	
SC		X			X	
SD	X					
TN		X			X	
TX		X			X	
UT	X					
VT	X					
VA		X			X	
WA		X			X	
WV		X			X	
WI	X					
WY	X					

Q39. Does central purchasing maintain a vendor performance list?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL		X			X
AK		X			X
AZ	X				
AR		X			X
CA		X			X
CO		X			X
CT		X			X
DE	X				
FL		X		X	
GA		X			
HI		X			
ID		X			X
IL		X			X
IN		X			X
IA		X			X
KS		X			X
KY		X		X	X
LA		X			X
ME	X				
MD		X			X
MA	X				
MI		X			X
MN		X			
MS	X				
MO		X			X
MT		X		X	
NE	X				
NV		X			X
NH		X			
NJ		X		X	
NM		X			
NY		X			
NC		X			X
ND		X			X
OH		X	X		
OK		X			X
OR		X			X
PA		X			X
RI	X				
SC		X			X
SD	X				
TN		X			X
TX		X			X
UT		X			X
VT	X				
VA		X			X
WA		X			
WV		X			X
WI		X	X		
WY	X				

Q40. Do you see a growing sentiment or trend in your State for central purchasing to have more supervision of agency inventories and surplus property?

	No	Yes	Comments
AL		X	
AK	X		
AZ	X		
AR	X		
CA		X	
CO		X	Surplus Property Only
CT		X	
DE	X	X	Inventories surplus
FL	X		
GA	X		
HI	X		
ID	X		
IL	X		
IN		X	
IA		X	
KS	X		
KY		X	
LA		X	
ME	X		
MD	X		This function supervised by Inventory Management Div.
MA		X	
MI	X		
MN	X		
MS	X		
MO		X	
MT	X		
NE		X	
NV		X	
NH		X	
NJ	X		
NM		X	
NY	X		
NC		X	
ND			
OH	X		
OK		X	
OR		X	
PA	X		
RI		X	
SC	X		
SD		X	
TN		X	Personal Property Utilization Division
TX		X	
UT		X	
VT		X	
VA	X		
WA	X		
WV	X		
WI		X	
WY		X	

Q41. Is there statutory authorization for cooperative purchasing between and among different units of government?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X	X			
AK	X					
AZ		X	X			
AR		X	X			
CA		X	X	X		
CO		X	X	X		
CT		X	X			
DE		X	X			
FL	X					
GA		X	X			
HI	X					
ID		X	X			
IL		X	X			
IN		X	X			
IA		X	X			
KS	X					
KY		X	X	X		
LA		X	X			
ME		X				
MD		X	X	X		
MA		X	X			
MI		X	X			
MN		X				
MS		X				
MO		X	X			
MT		X	X			
NE		X	X			
NV		X	X			
NH		X				
NJ		X	X			
NM		X				Limited
NY		X	X			
NC		X	X			
ND	X					
OH	X					
OK		X	X			
OR		X	X			
PA		X	X			
RI		X	X			
SC		X	X			
SD		X	X			
TN		X	X			
TX		X	X			
UT		X	X			
VT	X					
VA		X	X			
WA		X	X			
WV		X	X			
WI	X					
WY		X	X			

Q42. Are written commitments or agreements by the parties involved used in effecting cooperative purchasing?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK	X					
AZ		X				
AR		X	X			
CA		X	X			
CO	X					
CT		X			X	
DE	X					
FL		X			X	
GA	X					
HI	X					
ID		X			X	Some cases
IL		X	X		X	
IN	X					
IA	X					
KS	X					
KY		X			X	
LA		X	X		X	
ME	X					
MD		X			X	Limited commodity basis
MA		X			X	
MI		X			X	
MN		X				
MS	X					
MO		X	X			
MT	X					
NE	X					
NV		X	X			
NH	X					
NJ		X		X		
NM		X				
NY						Only in a few commodity areas when using state contracts. Most contracts provide optional participation by eligible entries.
NC		X		X		
ND		X				Only with institutions of higher education
OH						n/a
OK	X					
OR	X					
PA		X	X			
RI	X					
SC		X	X			
SD		X			X	
TN	X					
TX		X	X			
UT	X					
VT						n/a
VA	X					
WA		X				
WV	X					
WI	X					
WY		X				

Q43. Does state central purchasing assist local governments, formally, or informally, with specifications, mailing lists, and similar information? If yes, please explain briefly; for example, is this done only upon request?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL	X				X	This is done upon request. Local governments receive from their associations list of state contracts that are available for their use.
AK	X					
AZ		X				
AR		X	X			Only upon request
CA		X	X	X		Central purchasing reviews voluntary requests for equipment and supplies from local jurisdictions, and combines them with requisitions from state agencies to allow local governments to participate in state contracts. Central purchasing assists local agencies, upon request, with specifications and bid evaluation criteria for buying energy efficient rpdocuts and in purchasing data processing goods and services.
CO		X			X	Upon request only.
CT		X			X	Upon request by any local government.
DE		X	X			See question 50.
FL		X	X			Statute provides the Division furnish to local government requesting same copies of all regulations adopted by the Division. Other information also furnished upon request.
GA		X	X			This is done by request of the local government and the payment of a small annual fee.
HI	X					
ID		X				(1) through the Association of Idaho Cities; (2) through the Local-Treasure Valley Chapter - NIGP; and (3) by request.
IL		XX	X		X	Joint Purchasing Act - DAS makes certain contracts available for use by local governmental units.
IN	X					
IA		X				Done upon request as personnel and time are available.
KS		X			X	Has been done only occasionally upon request.

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
KY	X					Generally; we have on request assisted local governments on specific buys.
LA		X				Informally, upon request.
ME		X				Upon request.
MD		X				We respond to all requests from local government. Local governments may "piggy-back" state commodity contracts at their option (not mandatory). Some local government charters prohibit participation.
MA	X					
MI	X					
MN		X				Upon request.
MS		X				This Purchase Division has the responsibility to act in an advisory capacity in those areas referenced above.
MO		X				All services of the Division of Purchasing are available to local governments upon their request.
MT		X				Specifications and mailing lists are informally provided upon request of local governments.
NE		X				Upon request only.
NV		X				Done on request. All entities of the state including school districts use the facilities of this division on a voluntary basis.
NH		X				Upon request only
NJ		X		X		
NM		X				Local governments are assisted informally, and only upon request.
NY		X				To extent feasible - we do not, however, write individual contracts for each subdivision on non-term contract items.
NC		X				Only upon request and unofficially. Participation is currently limited to term contracts.
ND						Only to the extent of furnishing copies of awards to political subdivisions of those vendors who will sell at contract prices.
OH		X			X	Only upon request and is very informal.
OK		X	X	X		We send list of our state contracts to 200 cities annually and they tell us which contracts they want. Otherwise we assist upon

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
						request, requisitions, letters, etc.
OR		X				Upon request.
PA	X					
RI		X				Upon request.
SC		X	X			Upon request limited technical services and information, and may charge fees for services provided.
SD		X				Only upon request of the local unit.
TN		X	X			Local governments, upon request, are sent copies of statewide contracts. And, upon request, assistance is provided in areas of specifications, bid lists, special problems, vendor performance, procedures, etc. Procurement seminars for local governments are held across the state.
TX		X				Only upon request.
UT		X				State contracts are mailed on request to local units of government and school districts.
VT		X				Upon request, we will put out to bid and issue special purchase orders for local governments.
VA		X			X	Informally, upon request.
WA		X				Through scheduled meetings and upon request.
WV		X				A coordinator has been appointed to assist local governments with procurement problems and advice as well as supplying requested contracts available to them.
WI		X				Done on request.
WY		X				In the "Call for Bids" we have included a statement that this bid is not only for the State of Wyoming, but also for all political sub-division within the state. The political sub-division then at their choice make purchases against the state contract. At the present time we have approximately 12 such contracts. Informally, we also provide requesting local governmental entities specifications, bidders' lists and any other information we have.

Q44. Does central purchasing determine whether items are to be traded in, transferred to other agencies or sold?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL	X					
AK	X					
AZ		X			X	
AR		X	X			
CA		X		X		
CO		X	X			
CT		X			X	
DE	X					
FL	X					
GA	X					
HI	X					
ID		X	X			After Board of Examiners approval
IL	X					
IN	X					
IA		X	X	X		
KS		X	X			
KY		X		X		Purchasing Property Section
LA	X					
ME		X				
MD	X				X	Purchasing cooperates with Inventory Mgmt. Div.
MA		X				
MI	X					
MN	X					
MS		X				
MO		X	X			
MT	X					
NE	X					Handled by Surplus Bureau
NV		X	X			
NH		X				
NJ		X	X			
NM		X				
NY	X					
NC		X	X			
ND		X	X			
OH		X			X	
OK		X	X			
OR		X			X	
PA	X					
RI	X					
SC		X	X			
SD		X		X		
TN	X		X			Personal Property Utilization Division
TX		X			X	
UT		X			X	
VT		X	X			
VA	X					
WA		X	X			
WV		X			X	
WI		X			X	
WY		X	X			

Q45. Are the proceeds from disposition of surplus personal property credited to the owning agency, or to a general fund?

State	Statute	Rule or Reg.	Operating Procedure	Comments
AL	X			Owning Agency
AK		X		General Fund
AZ				General Fund
AR	X			Owning Agency
CA				General Fund, but revisions in progress to allow credit to owning agency.
CO		X		Both - depending upon situation
CT				General Fund
DE	X			If replaced in kind to owning agency, otherwise to general fund
FL				Owning Agency
GA				General Fund and Owning Agency
HI	X			General Fund
ID				Owning Agency for purchase of like items after administrative costs
IL	X			General Fund
IN	X			General Fund
IA				Can be either if agency has revolving fund authorization
KS				Owning Agency
KY				Owning Agency
LA				Not applicable to purchasing
ME				General Fund, unless federally funded
MD				General Fund
MA				General Fund
MI				General Fund unles department funds are restricted by statutes and surplus item has significant values, e.g., vehicles
MN				Owning Agency, exception may be a general auction
MS				Est. by statutes; varies with agencies
MO	X			General Revenue
MT	X			General Fund, few statutory exceptions
NE	X			Owning Agency (if cash or federal funds) otherwise to General Fund
NV		X		
NH				Special Funds or General Fund as applicable
NJ				General Fund
NM				General Fund
NY				General Fund
NC			X	Budgeted items go back to agency; unbudgeted items go to equipment reserve funds
ND				General Fund, if not special fund
OH				Credited to fund which items were originally purchased
OK	X			To Agency
OR	X			To Owning Agency (less fee)
PA				General Fund
RI				General Fund, except when federal or Board of Regents funding is involved
SC				General Fund
SD				Both, depending on source of funds

State	Statute	Rule or Reg.	Operating Procedure	Comments
TN	X			
TX	X			Owning Agency
UT				
VT				To Agency
VA				General Fund
WA	X			General Fund
WV				General Fund, some exceptions, but very few
WI	X			Generally Owning Agency
WY		X		Owning Agency

Q46. Does your personnel office place special weight on professional purchasing certification in job descriptions or recruiting announcements?

	No	Yes	Comments
AL	X		
AK	X		
AZ	X		
AR	X		
CA	X		
CO	X		
CT	X		
DE	X		
FL	X		
GA	X		
HI	X		
ID	X		
IL	X		
IN	X		
IA	X		
KS	X		
KY	X		
LA	X		
ME		X	
MD		X	New job specs will recognize and apply point credit for certification
MA	X		
MI	X		
MN	X		
MS		X	
MO	X		
MT	X		
NE	X		
NV	X		
NH	X		
NJ	X		
NM	X		
NY			Not specifically required; would be considered a plus in experience evaluation
NC	X		
ND	X		
OH		X	
OK	X		
OR	X		
PA	X		
RI	X		
SC	X		
SD	X		
TN	X		
TX	X		
UT	X		
VT	X		
VA	X		
WA	X		
WV	X		
WI	X		
WY	X		

Q47. How many professional associations is the central purchasing program active in?

State	Title
AL	three
AK	two
AZ	four
AR	four
CA	three
CO	three
CT	three
DE	three
FL	five
GA	three
HI	One
ID	Three and Minority Business Council
IL	Two
IN	One
IA	Two
KS	Two
KY	Two
LA	Three
ME	Three
MD	Four
MA	none
MI	Five
MN	Two
MS	Two
MO	Four
MT	One
NE	Two
NV	Two
NH	Two
NJ	Three
NM	n/a
NY	Three
NC	Two
ND	Two
OH	One
OK	Three
OR	Three
PA	One
RI	One
SC	Six
SD	Three
TN	Four
TX	Three
UT	Two
VT	none
VA	Four
WA	Three
WV	Two
WI	Three
WY	Three

Q48. Is there a statement in statute, rules or regulations, or administrative procedures which affirms a management role for central purchasing?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure
AL	X				
AK	X				
AZ		X	X		
AR		X	X		
CA		X	X	X	
CO		X	X		
CT		X		X	
DE	X				
FL		X	X		
GA		X	X		
HI	X				
ID		X	X		
IL	X				
IN		X	X		
IA	X				
KS		X	X		
KY		X	X	X	
LA		X	X		
ME		X	X		
MD	X				
MA	X			X	
MI		X	X		X
MN		X			
MS	X				
MO		X			
MT		X			X
NE		X	X		
NV		X			
NH		X	X		
NJ		X	X		
NM		X	X		
NY		X	X		
NC		X	X		
ND		X	X		
OH		X		X	
OK		X	X		
OR		X	X		X
PA	X				
RI		X	X		
SC		X	X		
SD		X	X		
TN		X		X	
TX	X				
UT		X			X
VT		X	X		
VA		X	X		
WA		X	X		
WV		X	X		
WI	X				
WY		X	X		

Q49a. Does central purchasing now have, or is it actively developing a Policy, Rules and Regulations or Administrative Procedures Manual?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X				
AK		X		X	X	
AZ		X				
AR		X				
CA		X			X	
CO		X	X			
CT		X			X	
DE	X					
FL		X		X		
GA		X				
HI	X					
ID		X	X			
IL		X		X	X	
IN		X				
IA		X		X		
KS	X					
KY		X				
LA		X				
ME		X				
MD		X			X	Issued to all agencies
MA		X			X	
MI		X				
MN		X				
MS		X				
MO		X				
MT		X		X		
NE		X	X			
NV		X				
NH		X				
NJ		X			X	
NM		X				
NY		X	X			
NC		X				
ND		X				
OH		X		X		
OK		X	X	X	X	
OR		X		X	X	
PA		X				
RI		X			X	
SC		X				
SD		X			X	
TN		X	X			
TX		X			X	
UT		X	X			Rules and regulations
VT		X			X	
VA		X			X	
WA		X	X			
WV		X			X	
WI		X				
WY		X	X			

Q49b. Does central purchasing now have, or is it actively developing an Operations, or Internal Procedures, Manual?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X				
AK		X			X	
AZ		X				
AR		X				
CA		X			X	
CO		X				
CT	X					
DE	X					
FL		X			X	
GA		X				
HI		X				
ID		X			X	
IL	X					
IN		X				
IA		X			X	
KS	X					
KY		X				
LA	X					Now being prepared
ME		X				
MD		X			X	Being revised
MA		X			X	
MI		X				
MN		X				
MS		X				Now being prepared
MO		X				
MT	X					
NE		X			X	
NV	X					
NH		X				
NJ		X		X	X	
NM		X				
NY		X			X	
NC		X				
ND		X				
OH		X			X	
OK		X				
OR		X			X	
PA		X				
RI		X			X	
SC		X				
SD		X			X	
TN		X				
TX		X			X	
UT	X					
VT		X			X	
VA		X			X	
WA		X	X			
WV		X			X	
WI		X				
WY		X			X	

Q49c. Does central purchasing now have, or is it actively developing a Vendors (or "How to do Business with") Manual?

	No	Yes	Stat.	Rule or Reg.	Operating Procedure	Comments
AL		X			X	
AK		X				
AZ		X				
AR		X				
CA	X					We do have a pamphlet.
CO		X				
CT		X			X	
DE	X					
FL		X			X	
GA		X				
HI		X				
ID		X			X	
IL	X					
IN		X				
IA		X			X	
KS	X					
KY	X					
LA		X				
ME		X				
MD		X			X	In process
MA		X			X	
MI		X				
MN		X				
MS		X				Now being prepared
MO		X				
MT	X					
NE		X			X	
NV	X					
NH		X		X		This is part of Regular Manual of Procedures
NJ		X		X	X	
NM		X				
NY		X			X	
NC		X				
ND		X				
OH		X			X	
OK		X				
OR		X			X	
PA		X				
RI		X			X	
SC		X				
SD		X			X	
TN		X				
TX		X			X	
UT		X			X	
VT		X			X	
VA		X			X	
WA		X				
WV		X			X	
WI		X				
WY	X					

Q50. What single change or improvement do you think would be of most benefit to your central purchasing program?

State	
AL	To become more automated with use of word processors. To have more annual contracts. To allow using agencies to release purchase orders against contractor.
AK	More people to do the work. The lack of workers account for our trend away from centralized purchasing.
AZ	Model procurement code.
AR	Increased automation.
CA	The most significant change that would improve our centralized purchasing program, and one that will come in the future, is to have state agencies on-line in a computerized materials services and inventory management program. The cost savings and increased efficiency that will be realized when this eventually happens should be signficant.
CO	ADP assistance.
CT	Review of all purchase orders and direct purchase orders by Central Purchasing before they are forwarded to the vendor. This would require computer capabilities.
DE	Our program is not mandatory; the statute says we may inaugerate a system of central purchasing for state agencies and local governments and volunteer fire departments desiring to participate. We would like to see it made mandatory for state agencies.
FL	Legislative (funding) support for implementation of complete mechanization program.
GA	Increased usage of schedule buys and contracts in order to take advantage of the state's purchasing power.
HI	Rewrite statutes on expenditure of public monies.
ID	Improvement: My two administrative purchasing officials have CPPO's. My two administrative buyers have PPB's.
IL	To become a more centralized purchasing function and adopt the merits of the model procurement code; be exempt and free of political influence and be more adequately funded to centralize more purchasing functions.
IN	Computerization.
IA	To develop and implement a data processing system that would automate many of the functions now done manually and to capture meaningful data for management of the purchasing function.
KS	Automation.
KY	Staffing to support a post-contract administrative section.
LA	Implementation of an inspection and testing program.
MD	Revision of new procurement law and the rules and regulations implemented 7/1/81 would permit our servicing using agencies on a timely basis. Elimination of reporting procedures would allow buyers more time to buy and develop an expertise for the commodities they purchase.
MA	The implementation of an automatic data processing system, which has been designed by an Application Team Transfer study and is being programmed, at present, by in-house programmers and systems' analysts, should cause the biggest improvement in central purchasing. It (the computerized system) would supplant the manual system in present use.
MI	Eliminate increasing amount of legislation restricting purchases to special interest groups; e.g., disadvantaged businesses, sheltered workshops and prison industries.
MN	Computerization.

MS Computerization.

MO Revising the state statutes to allow more flexible professional discretion.

MT Funding has been authorized to provide a limited amount of data processing capabilities.

NE A computerized vendor list.

NV Nevada has an extremely strong and workable "Purchasing Act" within the statutes and the Legislature is very cooperative in making necessary changes. Therefore, I do not think major changes need to be made and consequently, no single change would be of any great benefit.

NH Automation for certain selected functions of the agency.

NJ The implementation of a computerized purchasing information management system which facilitates the procurement process and will enhance management applications.

NM Additional centralizing to include local governments and universities.

NY Increased funding for computerization.

NC Completion of automation program - currently underway.

ND Word processing capabilities.

OH For the Administrator of State Purchasing to have the authority to contract for and purchase material, supplies, equipment and/or services when as a result of a formal competitive bid no responses were received.

OK Make director merit system employee. Executive Branch back up authority of purchasing director as provided by statute. Agencies like to spend their own budgets - we need more buyers and specification personnel - good computerization would help.

OR On line Management Information and Document Management Systems to provide ready access to current purchasing data (see ques. 11).

PA Automation.

RI None-the existing statutes provide the necessary framework for our central purchasing operation.

SC Our new code and regulations were implemented August 1, 1981. No comments at this time.

SD A better system for rewarding employees for outstanding performance.

TN Strengthen or increase staff in effectiveness of overview of delegated purchases.

VT To reorganize the Purchasing Division to be a Central Services Division obtaining cost savings not only in the procurement of supplies and equipment and management of surplus, but also in communications systems including mail, telephone, and printing.

VA The implementation of an automated purchasing system. We have completed a "need" analysis, broadly defined programs and assigned priorities for program development. In October 1981, eight analyst/programmers will begin to develop program beginning with contract administration. It will take approximately 48 months to fully phase in the programs. The Governor and Legislature approved the automation proposal and authorized full funding in January 1981

WV Automated computer purchasing system.

WI Improved skills at writing specifications.

WY The repeal of Wyoming's "In-State Statutes" or rewriting the present statutes in a more understandable language.

APPENDIX A-3

Survey of Selected Purchasing Practices of Local Governments

National Institute of Governmental Purchasing

October 1981

A survey of certain purchasing practices of local governments as included in the October 1981 report of the Procurement Research Committee of the National Institute of Governmental Purchasing, Inc. The tabulations present a summary of responses from 94 jurisdictions.

Q1	Cooperative purchasing is legally permitted.	88%
Q2	Types of cooperative purchasing engaged in:	
	A. Combines requirements with other jurisdictions.	4%
	B. Purchases under contracts established by other jurisdictions after prior commitment.	32%
	C. Purchases under contracts established by other jurisdictions without prior commitment.	45%
Q3	Law permits others to purchase under the jurisdiction's contracts.	40%
Q4	Jurisdiction may buy under contracts of others, but does not as a general practice.	40%
Q5	Actively pursues joint cooperative purchasing purchasing efforts with other jurisdictions.	46%
Q6	Engages in cooperative purchasing only occasionally.	30%
Q7	Does not participate in cooperative purchasing.	6%
Q8	Preference for local bidders or local products is not legally required and not practiced.	62%
Q9	Preference is practiced but not legally required.	28%
Q10	Preference is legally required for the purchase of:	
	A. Commodities only.	5%
	B. Construction work only.	6%
	C. Professional services only.	1%
	D. Commodities, construction, and professional services.	2%
Q11	Amount of local preference given, in price percentage:	
	A. Less than 5 percent	1%
	B. 5 to 8.9 percent	10%
	C. 9 percent and over	11%
Q12	Newspaper advertising of proposed purchases is legally required.	69%
Q13	Newspaper advertising is practiced though not legally required.	18%
Q14	Newspaper advertising is used very rarely.	10%
Q15	Newspaper advertising is never used.	2%
Q16	Law specifies or provides for small purchases.	13%
Q17	Small purchases are defined or designed by administrative policy.	41%

Q18	Amount under which purchases may be made by user agencies:	
	A. Less than $100	30%
	B. $100 to $399	19%
	C. $400 to $599	4%
	D. $600 to $999	--
	E. $1,000 or more	7%
Q19	Competitive sealed bidding (i.e., formal bidding) is required:	
	A. By law	54%
	B. By administrative policy	16%
Q20	Competitive sealed bidding is required for purchases over:	
	A. 0 to $999	10%
	B. $1,000 to $3 999	38%
	C. $4,000 to $5,999	34%
	D. $6,000 to $9,999	2%
	E. $10,000 or more	13%
Q21	Limit of dollar approval of the chief of purchasing on contracts:	
	A. Less than $1,000	4%
	B. $1,000 to $2,999	16%
	C. $3,000 to $4 999	10%
	D. $5,000 to $9,999	11%
	E. $10,000 or more	23%
Q21a	Limit of dollar approval of the chief of purchasing on purchase orders:	
	A. Less than $1,000	6%
	B. $1,000 to $2 999	19%
	C. $3,000 to $4,999	12%
	D. $5,000 to $9,999	20%
	E. $10,000 or more	36%
Q22	Otner or additional approvals are required.	63%
Q23	Types of professional services handled by the central purchasing office:	
	A. Consultant	32%
	B. Engineering	40%
	C. Architectural	30%
	D. Legal	16%
	E. Auditing	13%
	F. Insurance	11%
	G. Other	23%
	H. Not specified	6%
Q24	Methods utilized for purchasing professional services:	
	A. Competitive Sealed Bidding	15%
	B. Competitive Negotiation	24%
	C. Noncompetitive Negotiation	12%
	D. Other	13%

Q25	Central purchasing does not buy professional services.	26%
Q26	Jurisdiction has an active program of purchasing energy efficient products.	35%
Q27	Jurisdiction utilizes experiences of other government purchasing in buying for energy conservation.	10%
Q28	Jurisdiction does not yet have a program or activities for energy conservation purchasing.	18%
Q29	Jurisdiction has no plans for such a program	7%
Q30	Bonding is legally required from bidders or contractors.	37%
Q31	Bonds are required by administrative policy.	19%
Q32	Bonding is not required.	35%
Q33	Jurisdiction has issued a:	
	A. Purchasing Policy Manual	73%
	B. Purchasing Internal Procedures Manual	50%
	C. Vendor, or "How to do Business with Us," Manual	39%

Q34 Date and revision of manuals

	Policy Manual	Procedures Manual	Vendor Manual
A. Issued prior to 1980	27%	14%	7%
B. Issued or revised in 1980 or 1981	37%	53%	60%
C. Issue date not given	16%	10%	10%
D. Manual is revised regularly	5%	13%	7%
E. Manual is in process of revision	14%	15%	7%

Q35	Jurisdiction has established a formal bidders list.	69%
Q36	Pre- or postqualification of bidders is required.	55%
Q37	Bidder application form is utilized.	40
Q38	Jurisdiction has a legally required protest and appeals procedure	16
Q39	Protest and appeals procedure is established by administrative policy.	31%
Q40	The procedure is essentially a formal one.	14%
Q41	The procedure is essentially an informal.	38

Q42	The hearing authority for protests and appeals is:	
	A. Purchasing Agent	12%
	B. Purchasing Chief or Director	18%
	C. A Board	4%
	D. Other	6%
Q43	Jurisdiction has no protest and appeals procedure.	19%
Q44	Jurisdiction allows multiple awards.	73%
Q45	Average time for processing invoices for payment is:	
	A. 14 days or less	41%
	B. 15 to 30 days	37%
	C. 31 to 45 days	6%
	D. Over 45 days	4%
	E. Time not reported	11%
Q46	Jurisdiction has programs or activities to assist minority businesses to sell to the jurisdiction.	42%
Q47	Jurisdiction has legal requirements for assisting minority business.	37%

APPENDIX A-4

Survey of Additional Purchasing Practices of Local Governments

National Institute for Governmental Purchasing

December 1981

A survey of additional purchasing practices of local governments conducted in December, 1981 by the National Institute of Governmental Purchasing, Inc. to assist in the preparation of this publication. The tabulations represent responses from 1..6 jurisdictions.

Tabulations for Questions 2, 26, 37, 38, 42, 44, 46, 51, 54, and 56 are on pp. 258-60.

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q1 Does your jurisdiction have a central purchasing office which buys or contracts for the requirements of most or all agencies?	1%	99%	14%	21%	29%
Q2 See Page 258.					
Q3 Is there a statement in statute, rules or regulations, or administrative procedures which affirms a management role for central purchasing?	14%	86%	38%	20%	27%
Q4 Are any agencies exempt by law from purchasing through the central purchasing office, or otherwise authorized to buy most of their requirements?	60%	40%	38%	18%	35%
Q5 Is there a trend toward more or less centralization in your jurisdiction's contracting?	21%	79%	3%	2%	13%
Q6 Is there a requirement in your jurisdiction's purchasing law for sealed bids, publicly opened?	4%	96%	47%	18%	12%
Q7 Are conditions under which competitive bidding may be waived set forth in writing?	13%	87%	44%	18%	21%
Q8 Does central purchasing have final responsibility for the content of Invitations for Bids, including the suitability of specifications?	13%	87%	19%	17%	35%
Q9 Does central purchasing have authority to send back purchase requisitions on the basis of need or quality?	19%	81%	10%	18%	36%
Q10 Can central purchasing authorize waiving competitive bidding for the purchase of an item for experiment, test or trial?	38%	62%	14%	21%	28%
Q11 Must the reason(s) for waiving competitive bidding be documented?	10%	90%	23%	18%	23%

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q12(a) Are there written procedures for handling sole source purchases?	18%	82%	21%	25%	24%
Q12(b) Are there written procedures for handling emergency purchases?	7%	93%	21%	27%	28%
Q13 Does central purchasing have authority for acquiring, or approving, contracts for professional services required by other state agencies?					
(a) Any such contracts?		41%	15%	16%	38%
(b) All such contracts?		26%	15%	26%	52%
Q14 Is central purchasing involved in reviewing or approving purchases under all unsolicited offers made to agencies responsible to central purchasing?	14%	86%	14%	18%	29%
Q15 Can central purchasing void a contract that is entered into contrary to law, rules or regulations?	32%	68%	25%	11%	38%
Q16 Does central purchasing have written protest and appeals procedures?	61%	39%	20%	28%	35%
Q17 Is there a conflict of interest statute or regulation that applies specifically to the purchasing process?	53%	47%	28%	14%	16%
Q18 Is there a rule prohibiting the purchasing department from making purchases on behalf of the jurisdiction's employees?	48%	52%	13%	21%	43%
Q19 Are there statutory or regulatory provisions authorizing confidentiality of certain types of information or data?	66%	34%	39%	19%	30%
Q20 Is there an established format for reporting non-competitive bidding or practices to legal authorities?	60%	40%	17%	23%	35%

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q21 Does central purchasing have or is it actively developing a computerized "Purchasing Management Information System": that is, the use of ADP data for planning, scheduling, and helping make management decisions?	46%	54%	0%	1%	34%
Q22 Does your jurisdiction have the authority to purchase equipment, materials, or supplies by negotiation, apart from sole source, emergencies, or very small purchases?	50%	50%	26%	15%	21%
Q23 Is two-step or multi-step bidding used?	56%	44%	4%	6%	31%
Q24(a) Are there written criteria for including applicants on bidders lists?	57%	43%	11%	20%	36%
Q24(b) Are there written criteria for suspending or debarring bidders from the lists?	54%	46%	18%	20%	34%
Q25 Does your jurisdiction use any formal or informal method of rotating bidders' lists?	73%	27%	5%	14%	34%
Q26 See Page 258.					
Q27 Is there a written rule for handling mistakes in bids?	56%	44%	25%	21%	39%
Q28 Do you prohibit any substantive changes in bids following public opening?	29%	71%	15%	18%	35%
Q29 Are there written guidelines for determining bidder responsibility and bid responsiveness?	42%	58%	19%	16%	39%
Q30 After opening, do you usually refer bids to the using agency for its review and recommendation?	10%	90%	1%	6%	45%

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q31 Are reasons documented when award is made to other than the low initial price bidder?	1%	99%	12%	11%	37%
Q32 Do almost all of your purchases consist of commercially available items that also are sold to other customers and the public at large?	11%	89%	1%	3%	11%
Q33 Do you use the same types of specifications and purchase descriptions (that is, design, performance, brand name or equal, qualified products lists) to purchase items under both definite definite quantity and indefinite quantity and indefinite quantity contrats, including multiple award?	7%	93%	0%	5%	28%
Q34 Do you utilize specification advisory comittees made up of using agency personnel?	48%	52%	3%	5%	38%
Q35 In developing standard specifications or qualified products lists, do you circularize drafts for industry review and comments or otherwise obtain industry input?	6%	94%	0%	1%	23%
Q37 See Page 258.					
Q38 See Page 258.					
Q39 Do you think the practice of "back-door selling" interferes with or impairs fair competition?	5%	95%	1%	2%	1%
Q40 Is purchasing authorized by statute or rule to reject any and all bids, in whole or in part?	10%	90%	35%	31%	14%
Q41(a) Do you usually reject all bids if the prices offered appear to be too high?	5%	95%	4%	3%	15%

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q41(b) Following such a rejection, are new bids usually called for?	2%	98%	4%	3%	11%
Q41(c) Following such a rejection, can the purchase be negotiated in the open market at a lower price?	61%	39%	18%	6%	14%
Q42 See Page 259.					
Q43 In making multiple awards do you ever limit the number of successful bidders or suppliers for a particular item or contract?	68%	32%	0%	2%	17%
Q44 See Page 259.					
Q45 Are there specific statutory provisions or rules and regulations, which authorize the award of a contract to more than one bidder?	83%	17%	21%	25%	36%
Q46 See Page 259.					
Q47 Do the using agencies receive and inspect items purchased under contracts made by the central purchasing office?	2%	98%	2%	8%	31%
Q48 Has central purchasing developed an inspection manual, or similar set of guidelines?	77%	23%	0%	13%	37%
Q49 Do you have a product testing program or use product testing procedures?	67%	33%	0%	2%	19%
Q50 Does the central purchasing office have its own inspectors to assist or supplement inspection of the products delivered to agencies?	85%	15%	0%	4%	17%
Q51 See Page 259.					
Q52 Does central purchasing maintain a vendor performance file?	60%	40%	2%	0%	38%
Q53 Does central purchasing determine whether items are to be traded in, transferred to other agencies, or sold?	20%	80%	14%	4%	27%

	No	Yes	Law	Rule or Reg.	Admin. Procedure
Q54 See Page 259.					
Q55 Do you see a growing sentiment or trend in your jurisdiction for central purchasing to have more supervision of agency inventories and surplus property?	28%	72%	2%	1%	11%
Q56 See Page 260.					
Q57 Is there a board, commission, or staff unit whose primary responsibility is to oversee and/or enforce your purchasing procedures?	56%	44%	17%	14%	11%
Q58 Is there a legal or regulatory requirement that the purchasing program be reviewed for compliance with applicable laws, rules and regulations?	53%	47%	21%	14%	12%
Q59 Does your personnel office place special weight on professional purchasing certification in job descriptions or recruiting announcements?	69%	31%	0%	2%	14%

Q60 Answers to this question were varied, but when viewed as a whole certain patterns became evident. The needs expressed can be divided into external and internal groupings. The external group related to revisions of statutes or rules and regulations which would result in expanded duties and authority for the central purchasing program, such as authorization to contract for various types of services, or to establish and enforce a complete materials management program.

The internal group related in large part to a need for more support from higher management including necessary budget for better training and more professional personnel, and especially for greater data processing capabilities. Also the local governments pointed to a need for improved central stores and warehouses along with better inspection and testing.

a. Change statutes or rules and regulations	28%
b. Increased Data Processing capabilities, with better planning inventory management and other controls	20%
c. More support from higher management, including	19%

budget resources and original changes	
d. Increased personnel and better staff training including higher job-- qualifications	10%
e. Better receiving and stores warehouses	8%
f. Written procedures Manual including revised forms and better internal processing	4%
g. Better communications with using agencies, including better turn-around time	3%
h. Greater input into higher management	3%

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including better turn-around time	
h. Greater input into higher management	3%

Q2 What is the name of body or title of individual who prescribes purchasing procedures which affirms a management role for central purchasing?	Board or Council	Purch. Director	Chief Executive	Dept. Head
	56%	21%	19%	4%

Q26 What are the statutory criteria for evaluating bids and awarding contracts? Please quote from the relevant law, (e.g., "...award shall be made to the lowest responsible bidder taking into consideration the quality, suitability, and delivery of the articles offered as specified...")

a. lowest responsible bidder	44%
b. essentially as stated in example	35%
c. "lowest responsible bidder" or "lowest bidder most advantageous to the (jurisdiction)"	21%

Q37 In general, over the last five years, has your use of the following types of specifications or purchase descriptions descriptions, increased, decreased or stayed the same?	Increased	Decreased	Stayed the Same
a. Detailed Design Specifications	38%	12%	50%
b. Performance or Functional Specifications	61%	2%	37%
c. Brand Name or Equal Specifications	21%	32%	47%
d. Qualified Products Lists	32%	10%	58%

Q38 Compared to five years ago, are you taking into account the costs of supplies, energy, parts, warranties, maintenance, or other costs of owning and operating the product in determining the low bidder?	More Frequently	Less Frequently	About the Same
	79%	1%	20%

	Often	Sometimes	None
Q42 How frequently are multiple award constracts awarded?			
a. Under Sealed Bids?	18%	54%	28%
b. By Negotiation without bids?	5%	33%	62%

Q44 Broadly speaking, under what circumstances or conditions is it advantageous to make a multiple award instead of a single award?

a. To provide needed quantity coverage or back-up supply	37%
b. To provide lowest prices available in a range of items	36%
c. To provide necessary geographic coverage	21%
d. To provide coverage of types of products that might be needed	6%

	Upward	Downard	Both	Neither
Q46 As a rule, do your indefinite quantity term contracts provide for price adjustments?	4%	2%	65%	29%

Q51 What remedies are available by statute or regulation in cases of default or fraud by suppliers? Please circle all that apply. (Use of multiple remedies cause totals to exceed 100%.)

a. Collection Against Supplier's Bond	80%
b. Suspend from Bidding	73%
c. Buy item elsewhere and charge contractor any excess costs	58%
d. Replacement of Item	56%
e. Debar from Bidding	56%
f. Recovery any Payments made	45%

	Owning Agency	General Fund	Varies By Type of Item
Q54 Are the proceeds from disposition of surplus personal property credited to the owning agency, or to a general fund?	12%	62%	26%

Q56 In your opinion, what areas of the purchasing program are most vulnerable to fraud, from within and/or outside government? government?

a. Suppliers relationships with using agencies	22%
b. Receiving and stores operations	21%
c. Bidder collusion and sole source purchases	17%
d. Service and maintenance contracts	12%
e. Small purchases	10%
f. Other	18%

Appendix B
Case Law

Central Purchasing Authority and Responsibilities

R. G. Wilmott Coal Co. v. State Purchasing Commission, 240 Ky. 115, 54 S.W.2d 634, 86 A.L.R. 127 (1932)

Griswold v. Ramsey County, 242 Minn. 529, 65 N.W.2d 647 (1954)

State *ex rel.* Great Falls Mr. Klean v. Montana State Board of Examiners, 153 Mont. 220, 456 P.2d 278 (1969)

Holtz v. Babcock, 143 Mont. 341, 389 P.2d 869 (1963)

State v. Kollarik, 22 N.J. 558, 126 A2d 875 (1956)

State *ex rel.* S. Monroe & Son Co. v. Baker, 112 Ohio St. 356, 147 N.E. 501 (1925)

State *ex rel.* Junk v. Herrick, 107 Ohio St. 611, 140 N.E. 314 (1923)

Yohe v. City of Lower Burrell, 418 Pa. 23, 208 A2d 847 (1965)

McIntosh Road Materials Co. v. Woolworth, 365 Pa. 190, 74 A.2d 384 (1950)

Schull Construction Co. v. Board of Regents, 79 S.D. 487, 113 N.W. 2d 663 (1962)

Robbins v. City of Rapid City, 71 S.D. 171, 23 N.W.2d 144 (1946)

Savage v. State, 74 Wash. 2d 618, 453 P.2d 613 (1969)

Petschl v. Century 21 Corp., 61 Wash. 2d 283, 377 P.2d 991 (1963)

State *ex rel.* Hercules Tire & Rubber Supply Co. v. Gore, 152 W. Va. 76, 159 S.E.2d 801 (1968)

Exemptions from Central Purchasing

Parkin v. Day, 250 Ark. 35, 463 S.W.2d 656 (1971)

Los Angeles Dredging Co. v. City of Long Beach, 210 Cal. 348, 291 P. 839, 71 A.L.R. 161 (1930)

Comley v. Board of Purchase, 111 Conn. 664, 149 A. 410 (1930)

Parker v. Panama City, 151 So. 2d 469, 15 A.L.R.3d 725 (Fla. 1963)

Eggart v. Westmark, 45 So. 2d 505 (Fla. 1950)

McNay v. Town of Lowell, 41 Ind. App. 627, 84 N.E.778 (1908)

Fisk v. Board of Managers, 134 Kan. 394, 5 P.2d 799 (1931)

State v. Smith, 334 Mo. 396, 67 S.W.2d 50 (1933)

Holtz v. Babcock, 143 Mont. 341, 389 P.2d 869 (1963)

Miller Insurance Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933)

Scatuorchio v. Jersey City Incinerator Co., 14 N.J. 72, 100 A.2d 869 (1953)

Mullen v. Town of Louisberg, 225 N.C. 53,33 S.E.2d 484 (1945)

State *ex rel.* Small v. Hughes County Commission, 81 S.D. 238, 133 N.W.2d 228 (1965)

Jibben v. City of Sioux Falls, 79 S.D. 143, 109 N.W.2d 252 (1961)

Washington Fruit & Produce Co. v. City of Yakima, 3 Wash. 2d 152, 100 P.2d 8, 128 A.L.R. 159 (1940)

Specifications

White v. McDonald Ford Tractor Co., 287 Ala. 77, 248 So.2d 121 (1971)l

Berryhill Office Equipment Co. v. Phillips, 35 Ariz. 180, 276 P. 4 (1929)

Fones Brothers Hardware v. Erb, 54 Ark. 645, 17 S.W. 7 (1891)

Town of Mill Valley v. Massachusetts Bonding & Insurance Co., 68 Cal. App. 372, 229 P. 891 (Dist. Ct. App. 1924)

Bader v. Sharp. 36 Del. Ch. 89 125 A.2d 499 (Sup. Ct. 1955)

Hinds vs. State *ex rel.* Knight, 59 So. 2d 634 (Fla. 1952)

Wester v. Belote, 103 Fla. 976, 138 So. 721 (1931)

Federal Electric Corp. v. Fasi, 527 P.2d 1284 (Hawaii 1974)

Tousey v. City of Indianapolis, 175 Ind. 295, 94 N.E. 225 (1911)

Walker & Brothers v. Manning, 6 Iowa 518 (1858)

Wilden Clinic, Inc. v. City of Des Moines, 229 N.W.2d 286 (Iowa 1975)

Meahl v. City of Henderson, 290 S.W.2d 593 (Ky. 1956)

Commissioners of Sewage v. National Surety Co., 145 Ky. 90, 140 S.W. 62 (1911)

Standard Highway Co. v. Policy Jury, 158 La. 294, 103 So. 819 (1925)

Gunning Gravel Co. v. City of New Orleans, 45 La. Ann. 911, 13 So. 182 (1893)

Dewey Jordan, Inc. v. Maryland National Capital Park & Planning Commission, 258 Md. 490, 265 A.2d 892 (1970)

Board of Education v. Allender, 206 Md. 406, 112 A.2d 455 (1955)

Pacella v. Metropolitan District Commission, 339 Mass. 338, 159 N.E.2d 75 (1959)

Pascoe v. Barlum, 247 Mich. 343, 225 N.W. 506 (1929)

Foley Brothers, Inc. v. Marshall, 266 Minn. 401, 123 N.W.2d 387 (1963)

Nielsen v. City of St. Paul, 252 Minn. 12, 88 N.W.2d 853 (1958)

Otter Tail Power Co. v. Village of Elbow Lake, 234 Minn. 419, 49 N.W.2d 197 (1951)

Coller v. City of St. Paul, 223 Minn. 376, 26 N.W.2d 835 (1947)

Hillig v. City of St. Louis, 337 Mo. 291, 85 S.W.2d 91 (1935)

West Virginia Coal v. City of St. Louis, 324 Mo. 1021, 25 S.W.2d 466 (1930)

Pasche v. South St. Joseph Town-site Co., 190 S.W. 30 (Kan. City, Mo. Ct. of App. 1916)

Glennon v. Gates, 136 Mo. App. 421, 118 S.W. 98 (Kan. City Ct. App. 1909)

Resco Equipment & Supply Corp. v. City Council, City of Watertown, 313 N.Y.S.2d 74 (N.Y. App. Div. 1970)

Edenwald Contracting Co., Inc. v City of New York, 384 N.Y.S. 2d338 (N.Y. Sup. Ct. 1974)

Sanford Fire Apparatus Corp. v. Board of Fire Commissioners, 367 N.Y.S.2d 891 (N.Y. Sup. Ct. 1975)

Ruehl Co. v. Board of Trustees, 85 N.J. Super 4, 203 A.2d 410 (1964)

Gerzof v. Sweeney, 16 N.Y.2d 206, 264 N.Y.S.2d 376, 211 N.E.2d 826 (1965)

Grimm v. Troy, 60 Misc. 579, 303 N.Y.S.2d 170 (Sup. Ct. 1968)

Rodin v. Director of Purchasing, 38 Misc. 2d 362, 238 N.Y.S.2d (Sup. Ct. 1963)

Tinston v. City of New York, 17 App. Div. 2d 311, 234 N.Y.S.2d 730 (Sup. Ct. 1962)

Columbus Blank Book Co. v. Maloon, 116 Ohio App. 393, 188 N.E.2d 431 (1963)

L&M Properties v. Burke, 152 Ohio St. 28, 86 N.E.2d 768 (1949)

Page v. King, 285 Pa. 153, 131 A. 707 (1926)

Commonwealth v. Sanderson, 40 Pa. Super. 416 (1909)

Duke v. Bruce Independent School District, 77 S.D. 568, 96 N.W.2d 172 (1959)

Vilbig Brothers v. City of Dallas, 127 Tex. 563, 96 S.W.2d 229 (1936)

Hoffman v. City of Mt. Pleasant, 126 Tex. 632, 89 S.W.2d 193 (Comm. App. 1936)

Smith v. Seattle, 192 Wash. 64, 72 P.2d 588 (1937)

A.A.B. Electric, Inc. v. Stevenson Public School District, 5 Wash. App. 887, 491 P.2d 684 (Ct. App. 1971)

Platt Electrical Supply, Inc. v. City of Seattle, 555 P.2d 421 (Wash. Ct. App. 1976)

Harran Transportation Co. Inc. v. Board of Education, 335 N.Y.S.2d 465, reargument denied 335 N.Y.S.2d 1971 (N.Y. Sup. Ct. 1972)

Borg, Inc. v. Morris Middle School District N. 54, 278 N.E.2d 818 (Ill. App. Ct. 1972)

Hickey Ford Sales, Inc. v. Board of Education, 388 N.Y.S.2d 808 (N.Y. Sup. Ct. 1976)

C & D Contractors, Inc. v. Delaware Technical & Community College, 318 A2d 142 (Del. Ch. 1974)

Nolan, Hayes, & Warcup, Inc. v. Office of General Services, 382 N.Y.S.2d 695 (N.Y. Sup. Ct. 1976)

Use of Bidders Lists

Taylor v. Parker, 302, S.W.2d 125 (Ky. 1957)

Advertising

Berryhill Office Equipment Co. v. Phillips 35 Ariz. 180, 276 P.4 (1929)

Parks v. City of Pocatello, 91 Idaho 241, 419 P.2d 683 (1966)

Meahl v. City of Henderson, 290 S.W.2d 593 (Ky. 1956)

City of Hartford v. King, 249 S.W.2d 13 (Ky. 1952)

Jenkins v. City of Bowling Green, 39 Ky. 119, 64 S.W.2d 457 (1933)

Bennett v. Baltimore City, 106 Md. 484, 68 A. 14 (1907)

Anderson v. Board of Public Schools, 122 Mo. 61, 27 S.W. 610 (1894)

State v. Kuhner, 107 Ohio St. 406, 140 N.E. 344 (1923)

State *ex rel.* Dacek v. Cleveland Trinadad Paving Co., 35 Ohio App. 118, 171 N.E. 837 (1929)

Verardi v. Borough of Sharpsburg, 407 Pa. 246, 180 A.2d 6 (1962)

Dillingham v. Mayer, 75 S.C. 549, 56 S.E. 381 (1907)

Reiter v. Chapman, 177 Wash. 392, 31 P.2d 1005 (1934)

Handy v. Warren County Fiscal Court, 570 S.W. 2d663 (Ky. Ct. App. 1978)

Faust v. Donrey Media Group, 591 P.2d 1152 (Nev. 1979).

Resco Equipment & Supply Corp. v. City Council, City of Watertown, 313 N.Y.S.2d 74 (N.Y. App. Div. 1970)

Universal By-Products, Inc. v. City of Modesto, 117 Cal. Rptr. 525 (Cal. Ct. App. 1974)

Federal Electric Corp. v. Fasi, 527 P.2d 1284 (Hawaii 1974)

Platt Electrical Supply, Inc. v. City of Seattle, 555 P.2d 421 (Wash. Ct. App. 1976)

Waste Disposal, Inc. v. Mayor of Roselle Park, 367 A.2d 449 (N.J. Super. Ct. App. Div., 1976)

Gerard Construction Co. v. City of Manchester, 415 A2d 1137 (N.H. 1980)

DiVincenti Bros. v. Livingston Parish School Board, 355 So.2d 1 (La. Ct. App. 1977)

F.S.D. Industries, Inc. v. Board of Education, 399 A.2d 1021 (N.J. Super. Ct. App. Div. 1979)

State Board of Education v. Bus Supply Co., 386 So.2d 383 (Miss. 1980)

Upper Audubon Assn. v. Audubon Park Commission, 329 So.2d 206 (La. Ct. App. 1976)

Marvec-All State, Inc. v. Purcell, 441 N.Y.S. 2d 618 (N.Y. Sup. Ct. 1981)

Competitive Bidding

Kimbrell v. State, 272 Ala. 419, 132 So.2d 132 (1961)

Brown v. Phoenix, 77 Ariz. 368, 272 P.2d 358 (1954)

Parkin v. Day, 250 Ark. 35, 463 S.W.2d 656 (1971)

Fones Brothers Hardware v. Erb, 54 Ark. 645, 17 S.W. 7 (1891)

McRoberts v. Ammons, 104 Colo. 96, 88 P.2d 958 (1939)

Eggart v. Westmark, 45 So.2d 505 (Fla. 1950)

Inskip v. Board of Trustees, 126 Ill. 2d 501, 187 N.E.2d 201 (1963)

Wickwire v. City of Elkhart, 144 Ind. 305, 43 N.E. 216 (1896)

Iowa-Nebraska Light & Power Co. v. City of Villisca, 220 Iowa 230, 261 N.W. 423 (1935)

Fisk v. Board of Managers, 134 Kan. 394, 5 P.2d 799 (1931)

Board of Education v. Hall, 353 S.W.2d 194 (Ky. 1962)

Board of Regents v. Cole, 209 Ky. 761, 273 S.W. 508 (1925)

Boxwell v. Department of Highways, 203 La. 760 14 So.2d 627 (1943)

Hall v. City of Baltimore, 252 Md. 416, 250 A.2d 233 (1969)

Pacella v. Metropolitan District Commission, 339 Mass. 338, 159 N.E.2d 75 (1959)

Lasky v. City of Bad Axe, 352 Mich. 272, 89 N.W.2d 520 (1958)

Hunt v. Fenton, 313 Mich. 644, 21 N.W.2d 906 (1946)

Detroit Free Press Co. v. Board of State Auditors, 47 Mich. 135, 10 N.W. 171 (1881)

City of Hattiesburg v. Cobb Brothers Construction Co., 183 Miss. 482, 184 So. 630 (1938)

Hillig v. City of St. Louis, 337 Mo. 291, 85 S.W.2d 91 (1935)

Miller Insurance Agency v. Porter, 93 Mont. 567, 20 P.2d 643 (1933)

State v. Cote, 95 N.H. 428, 65 A.2d 280 (1949)

Township of Hillside v. Sternin, 25 N.J. 317, 136 A.2d 265 (1957)

Poling v. Roman, 86 N.J. Super. 484, 207 A.2d 219 (1965)

Mullen v. Town of Louisberg, 225 N.C. 53, 33 S.E.2d 484 (1945)

Allied Paint Manufacturing Co. v. Bradley, 21 Pa. D&C.2d 747,75 Dauphin 63 (Dauphin County Ct. 1960)

Duke v. Bruce Independent School District, 77 S.D. 568, 96 N.W.2d 172 (1959)

Fonder v. City of South Sioux Falls, 76 S.D. 31, 71 N.W.2d 618, 53 A.L.R.2d 493 (1955)

Tri-State Milling Co. v. Board of Commissioners, 75 S.D. 466, 68 N.W.2d 104 (1955)

Gostovich v. City of West Richland, 75 Wash. 2d 583, 452 P.2d 737 (1969)

United States Wood Preserving Co. v. Sundmaker, 186 F. 678 (C.A. 6th Cir. 1911)

Angel v. Behnke, 337 N.E.2d 503 (Ind. Ct. App. 1975)

Signacon Controls, Inc. v. Mulroy, 345 N.Y.S.2d 527 (N.Y. 1973)

Handy v. Warren County Fiscal Court, 570 S.W.2d 663 (Ky. Ct. App. 1978)

Mohave County v. Mohave-Kingman Estates, Inc., 586 P.2d 978 (Ariz. 1978)

Treasurer of Norfolk County v. County Commissioners of Norfolk, 387 N.E.2d 1175 (Mass. App. 1979)

Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala. 1979)

Riverside County v. Whitlock, 99 Cal. Rptr. 710 (Cal. Ct. App. 1972)

Rosentino v. City of Omaha, 183 N.W.2d 475 (Neb. 1971)

Atlantic Tug & Equipment Co. v. Town of Tonawanda, 357 N.Y.S.2d303 (N.Y. App. Div. 1974)

Sweet Associates, Inc. v. Gallman, 318 N.Y.S.2d 528 (N.Y. App. Div. 1971)

Resco Equipment & Supply Corp. v. City Council, City of Watertown, 313 N.Y.S.2d 74 (N.Y. App. Div. 1970)

Edenwald Contracting Co., Inc. v. City of New York, 384 N.Y.S.2d 338, (N.Y. Sup. Ct. 1974)

McArdle v. Board of Estimate, 347 N.Y.S.2d 349 (N.Y. Sup. Ct. 1973)

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Deputy Commissioner, Department of Finance and Control (Connecticut, March 14, 1977)
Assistant Director of Purchasing (Connecticut, November 9, 1976)
Assistant Director of Purchasing (Connecticut, May 10, 1976)
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Executive Director, State Purchasing Commission (Florida, February 15, 1967)
Dept. of Purchasing (Maine, October 25, 1962)
St. Louis County Purchasing Agent (Minnesota, January 9, 1968)
Ramsey County Attorney (Minnesota, June 12, 1967)

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State Board of Examiners of Architects (Colorado, December 5, 1975)
Deputy Commissioner, Bureau of Purchases (Connecticut, March 24, 1980)
Deputy Commissioner, Dept. of Administrative Services (Connecticut, March 16, 1978)
Federal Comptroller (Guam, April 7, 1982)
Principal, Doss High School (Kentucky, June 16, 1969)
Assistant Superintendent of Public Instruction (Kentucky, October 5, 1961)
State Public Examiner (Minnesota, February 19, 1971)
Montevideo City Attorney (Minnesota, August 22, 1969)
Prosecuting Attorney, Osage County (Missouri, June 23, 1971)
State Purchasing Agent (New Mexico, August 4, 1969)
State Purchasing Officer (North Carolina, August 3, 1970)
Butler County (Ohio, September 8, 1970)
Licking County (Ohio, February 11, 1969)
Prosecuting Attorney, Lucas County (Ohio, July 26, 1966)
District 11-A State Representative (Washington, October 16, 1970)
State Department (Washington, January 7, 1975)

Bid Security

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Letter from Attorney General to:
Dept. of Administration (Colorado, January 10, 1975)
Director of Purchasing (Connecticut, May 20, 1977)
Secretary, Dept. of Property and Supplies (Pennsylvania, April 18, 1973)
Secretary, Dept. of Property and Supplies (Pennsylvania, April 1, 1973)

Bid Opening and Recording

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Letter from Attorney General to:
Director, Div. of Supply (Alaska, June 15, 1966)
Commisioner, Dept. of Finance and Control (Connecticut, March 14, 1977)
Director, Youth Services Commission (Delaware, June 12, 1963)
Speaker, Sixteenth Guam Legislature (Guam, January 10, 1982)
Acting Director, Statewide Data Processing System (Hawaii, March 16, 1965)
Purchasing Agent (Maine, May 25, 1962)
Board of Education Supervisors and Board of County Commissioners of Garrett County (Maryland, January 6, 1956)
Corporation Counsel, City of St. Paul (Minnesota, December 27, 1952)
Commissioner of Highways (Minnesota, May 15, 1952)
Henderson County attorney (North Carolina, June 3, 1971)
State Purchasing Officer (North Carolina, October 10, 1969)
Secretary of Property and Supplies (Pennsylvania, February 14, 1941)
Dept. of Natural Resources (Utah, February 11, 1980)'ql

No Bid Response

Attorneys General's Opinions
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Eden City (North Carolina, May 15, 1970)

No Bid Received

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Executive Secretary, State Purchasing Council (Florida, September 28, 1953)
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Delaware State Hospital (Delaware, May 6, 1965)
Deputy Commissioner, Bureau of Purchases (Connecticut, February 15, 1978)
Act. Director, State Purchasing Commission (Florida, November 8, 1966)
Exec. Director, State Purchasing Commission (Florida, January 5, 1957)
Board of Control (Iowa, October 5, 1962)
Rock County Attorney (Minnesota, December 7, 1954)

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Letter from Attorney General to:
Deputy Commissioner for Finance & Control (Connecticut, March 14, 1977)
Assistant Director of Purchasing (Connecticut, May 10, 1976)
Dept. of Finance (Kentucky, January 26, 1968)
Asst. Director of Purchases (Minnesota, June 1, 1950)
State Purchasing Agent (Missouri, May 10, 1959)

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Attorneys General's Opinions
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Letter from Attorney General to:
Deputy Commisioner, Dept. of Finance & Control (Connecticut, April 1, 1976)
State Purchasing agent (Utah, August 23, 1979)

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Letter from Attorney General to:
Purchasing Agent (Maryland, May 15, 1962)
Secretary of Property and Supplies (Pennsylvania, May 16, 1936)
Secretary of Property and Supplies (Pennsylvania, December 16, 1935)

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Attorneys General's Opinions
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Letter from Attorney General to:
State Purchasing Director (Colorado, August 7, 1968)
State Purchasing Agent (Colorado, September 24, 1957)
State Purchasing Agent (Colorado, April 17, 1957)
Div. of Purchases (Colorado, January 16, 1949)
Comptroller, Dept. of Accounting and General Services (Hawaii, April 13,1965)
Dept. of Transportation (Hawaii, January 25, 1963)
Superintendent of Public Works (Hawaii, August 27, 1958)
State Representative, 38th District (Missouri, December 9, 1970)
State Senator Lamb (Nevada, August 17, 1970)
Counsel, Las Vegas Valley Water Distict (Nevada, June 9, 1967)
State Auditor (Utah, July 27, 1976)

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Office of State Auditor (Colorado, December 20, 1979)
Deputy Commissioner, Dept. of Administrative Serivces (Connecticut, March 16, 1978)
Legislative Auditor (Kentucky, November 10, 1970)
Sheriff, Fayette County (Kentucky, August 25, 1960)
State Auditor (New Mexico, September 12, 1969)
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Commissioner, Dept. of Administrative Services (Connecticut, June 26, 1977)

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Letter from Attorney General to:
Director, Div. of Supply (Alaska, May 31, 1966)
Deputy Director, Dept. of Centralized Data Processing (New Hampshire, August 17, 1971)
Henderson County Attorney (North Carolina, June 3, 1971)

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Letter from Attorney General to:
Asst. Superintendent of Public Instruction, Dept. of Education (Kentucky, September 17, 1962)
Director, Capital Outlay Budget Board (Louisiana, August 14, 1972)
Div. of Public Buildings (Missouri, February 3, 1953)
Farmville Town Attorney (North Carolina, December 8, 1970)
Secretary, Property and Supplies (Pennsylvania, January 14, 1974)

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Attorneys General's Opinions
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Letter from Attorney General to:
Director of Purchasing and Propety (New Hampshire, January 14, 1952)
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Letter from Attorney General to:
Judge, Hardin County Court (Kentucky, January 13, 1971)
Judge, Owsley County Court (Kentucky, October 18, 1962)
Asst. Superintendent of Instruction, Dept. of Education (Kentucky, September 26, 1962)
Adam Village Attorney (Minnesota, March 22, 1971)
State Purchasing agent (New Mexico, January 16, 1968)
Hon. C.M. Williams, 'Director' (North Carolina, February 3, 1953)
22nd District State Representative (Washington, November 15, 1971)

Combinations, Collusions, Conspiracies

Attorneys General's Opinions
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Letter from Attorney General to:
Commissioner of Dept. of Business Research and Development (Minnesota, February 5, 1951)
Asst. Director of Purchases, affirming opinion of June 10, 1940 (Minnesota, July 25, 1941)
Director of Purchases, Dept. of Administration (Minnesota, June 10, 1940)
Comptroller of Public Accounts (Texas, November 12, 1959)
Acting Supervisor, Div. of Purchasing (Washington, April 21, 1964)
Military Dept., Assistant Finance Officer (Washington, January 9, 1962)

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Attorneys General's Opinions
Op. Atty. Gen. I75-182 (Arizona, 1975)
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Act. Chairman, Idaho State Board of Correction (Idaho, March 21, 1969)
State Purchasing Agent (Idaho, December 4, 1959)
Chairman, Idaho State Board of Correction (Idaho, December 28, 1954)
Commissioner, Dept. of Finance (Kentucky, October 20, 1970)
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State Auditor (Maine, January 17, 1950)
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Director, Dept. of Civil Service (Minnesota, April 16, 1940)
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Appendix D
Glossary of Public Purchasing Terms

The definitions for the following words and phrases may be found in the *Uniform Commercial Code* and, to conserve space, are not reproduced here except for the very few having additional definitions peculiar to public procurement.

The glossary seeks primarily to present meanings for purchasing purposes, not legally or literally accurate definitions.

DEFINITIONS CONTAINED IN THE UNIFORM COMMERCIAL CODE

Accept
Acceptance
Action
Aggrieved party
Agreement
Alteration
Bailee
Bearer
Bearer form
Bill of lading
Bona fide purchaser
Buyer
Buyer in ordinary course of business
Cancellation
Certificate of deposit
Certification
Conforming to contract
Consignee
Consignor
Consumer goods
Contract
Contract for sale
Contract right
Customer
Debtor
Defendant
Definite time
Delivery
Delivery order
Document
Document of title
Equipment
Fault
Fungible
Genuine
Gives
Good faith
Goods
Holder in due course
Insolvency proceedings
Insolvent
Installment contract
Instrument
Inventory
Issue
Issuer
Item
Lot
Merchant
Negotiation
Note
Notice
On demand
Order
Party
Presumed
Presumption
Proceeds
Promise
Properly payable
Protest
Purchase
Purcheser
Receipt
Remedy
Rights
Sale
Sale on approval
Sale or return
Secondary party
Secured party
Security
Seller
Surety
Term
Termination
Third party
Value
Warehouse receipt

Acknowledgement—A form used by a vendor to advise a purchaser that an order has been received, and usually implying acceptance of the order.

Act of God—A contingency or occurence that cannot be avoided by human power; a cause of damage which is irresistible (e.g., hurricane, flood, lightning) and not attributable to negligence.

Administrative Law—A rule or regulation having the force and effect of law promulgated by an agency to implement, interpret or make statute law specific. See "Regulation," "Rule."

Advertising—A form of public notice of an intended purchase.

Advice of Shipment—A notice to a purchaser advising shipment has gone forward and usually containing details of packing, routing, etc.

Agency—(1) An administrative division of a government. (2) A relationship between two parties by which one, the agent, is authorized to perform or transact certain business for the other, the principal; also, the office of the agent.

Agent—A person authorized by another, called a principal, to act for him.

Agreement—See "Contract," "Purchase Order."

All-Or-None Bid—A bid submitted for a number of different items, services, etc., in which the bidder states he will not accept a partial award, but will accept only an award for all the items, services, etc., included in the Invitation for Bids. Such bids are acceptable only if provided for in the Invitation, or if the bidder quoted an individual price for each of the items, services, etc., as listed and is the low bidder on each item.

Alternate Bid—(1) A response to a call for alternative bids. See "Alternative Bid, Call For." (2) A bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.

Alternative Bid, Call For—An Invitation for Bids for a need that can be filled by items of varying materials, dimensions, styles, or other characteristics; bidders are invited to submit one or more bids as specified, but only one award will be made based on an assessment of what is most advantageous for the government, taking price and other factors into consideration.

Antitrust Legislation—Laws that attempt to prevent or eliminate monopolies or oligopolies and to prevent noncompetitive practices.

Authorized Price List—A price list of the products and/or services covered in a contract which contains minimum essential information needed by users for placing orders.

Appropriation—Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Approved Brands List—See "Qualified Products List."

Acquisition Price—See "Initial Price."

Arbitrary and Capricious Action—Action by whim or caprice; unreasoning action; ungoverned action; grounds for a court to overrule or remand an administrative decision or action.

Arbitration—A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision. Resolution of a disagreement by such a process.

Architect-Engineer and Land Surveying Services—Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by law.

Arrival Notice—A notice sent by a carrier to a consignee advising of the arrival of a shipment.

As Is—A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his own risk without recourse against the seller for the condition or performance of the goods.

Award—The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.

Back-Door Buying—Making a purchase without going through a central purchasing authority.

Back-Door Selling—Direct, undue marketing effort to induce preference on the part of program managers or using agencies for a particular product, service, or seller with intent to constrain competition.

Back Order—That portion of an order which a vendor does not deliver at the scheduled time and has re-entered for shipment at a later date.

Best Interests of the State (City, County)—A term frequently used in granting a purchasing official authority to use discretion to take action he feels is most advantageous to the government. The term is used when it is impossible to anticipate adequately the circumstances that may arise so that more specific directions could be delineated by the law of regulation. Case law affirms discretion for purchasing officials in these actions.

Bid—An offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders. Also, an offer by a buyer to a seller, as at an auction.

Bid-Award File—A file divided into commodity and item sections listing those solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

Bid Bond—An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as bid. See "Bid Deposit," "Bid Security."

Bid Deposit—A sum of money or check, deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositer) will, if selected, accept the contract in accordance with the bid. If the bidder does not accept the contract, he forfeits the amount of the deposit. See "Bid Bond," "Bid Security." See also "Forfeiture of Deposit of Bond."

Bid Opening—The process through which the contents of bids are revealed for the first time to the government, to other bidders, and usually to the public. See "Public Bid Opening."

Bid Sample—A sample required of a bidder for examination, comparison, testing, and evaluation by the prospective purchaser.

Bid Security—A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract, will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the bidder or his guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. See "Bid Bond," "Bid Deposit."

Bidder—Any person submitting a competitive bid in response to a solicitation. See "Bid," "Proposal," "Proposer."

Bidders List—A list maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. See "Prequalification of Bidders," "Qualified Bidder."

Bill—A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale; an invoice.

Bill of Materials—A list specifying the quantity and character of materials and parts required to produce or assemble a stated quantity of a particular product.

Blanket Order—An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. See "Open-end Contract," "Price Agreement," "Requirements Contract."

Blanket Purchase—See "Blanket Order."

Blind Trust—An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-benificiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Boiler Plate—Colloquial designation for standard terms and conditions, usually preprinted, incorporated in an Invitation for Bids, Request for Proposals, or a contract or purchase order. See "General Provisions."

Bona Fide—In good faith.

Brand Name—A product name which serves to identify a product of a particular manufacturer. A trade name.

Brand Name Specification—A specification that cites the brand name, model number, or some other designiation that identifies a specific product to be offered exclusive of others.

Brand Name or Equal Specification—A specification that cites brand names, model numbers, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

Breach of Contract—A failure without legal excuse to perform any promise which forms a whole or part of a contract. See "Forfeiture of Deposit or Bond."

Breach of Warranty—Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.

Bulk Purchasing—Purchasing in large quantities to seek a lower price per unit; volume purchasing.

Business—Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

Buyer—See "Purchasing Agent." See also "Uniform Commercial Code."

Buyer's Market—Market conditions in which goods can easily be secured and economic forces of business tend to cause goods to be priced at the purchaser's estimate of value.

Cash Discount—A discount from the purchase price allowed by the seller to the purchaser when payment is made within a designated period.

Cash on Delivery (COD)—Payment due and payable upon delivery of goods.

Catalog—A listing of item identifications arranged systematically.

Caveat Emptor—"Let the buyer beware." A maxim stating the buyer should be careful in making a purchase because the burden of defective goods rests with him. In contravention, the seller can be held reponsible for certain defects by means of suitable specifications, warranties, and contractual terms and conditions.

Caveat Venditor—"Let the seller beware." A maxim relating to situations where the vendor bears the responsibility for defects in the goods he sells.

Central Purchasing Authority—The administrative unit with the authority, responsibility, and control of purchasing activities.

Centralized Purchasing—A system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.

Certificate of Compliance—A supplier's certification that the supplies or services in question meet certain specified requirements.

Certificate of Non-Collusion—A statement signed by a bidder and submitted with his bid affirming that his bid is made freely, independently and without consultation with any other bidder.

Change Order—A written order directing the contractor to make changes which the Changes clause of the contract authorizes the purchaser to order without consent of the contractor.

Claim—The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such a demand.

Client Services—Services contracted for by a government jurisdiction on behalf of citizens clients usually requiring prequalification or licensing by the government for the performance of social or welfare services. Examples of client services include day care, half-way houses, vocational rehabilitation, guidance counseling and employment services.

Code of Ethics—A written set of guidelines within which judgments and considerations of professional ethics and behavior should be made. See "Purchasing Ethics."

Collusion—A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

Collusive Bidding—The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding. See "Corrupt Combination, or Conspiracy in Restraint of Trade," "Price Fixing."

Commercial Law—The branch of law that designates the rules that determine the rights and duties of persons engaged in trade and commerce. See "Uniform Commercial Code."

Commodity—An article of trade, a moveable article of value, something that is bought or sold; any moveable or tangible thing that is produced or used as the subject of barter or sale.

Competition—The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

Competitive Bidding—The submission of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services. Competitive sealed bidding is the preferred method of source selection in public purchasing.

Competitive Negotiation—A method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices be allowed, and the offer deemed by the awarding authority to be most advantageous in terms of criteria as designated in the Request for Proposals is accepted; a negotiated procurement.

Competitive Quotations—The customary, and usually prescribed, method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transactions designated as "informal bidding," or "small purchases."

Confidential Information—(1) Any information which is available to an employee only because of the employee's status as a public employee and is not a matter of public knowledge or available to the public on request. (2) Information, such as trade secrets and test data, which may be kept confidential in the purchasing process.

Confirming Order—A purchase order issued to a vendor, listing goods or services and terms of an order placed verbally, or otherwise, in advance of the issuance of the usual purchase document.

Conflict of Interest—A situation wherein an individual as part of his duties must make a decision or take action that will affect his personal interests. See "Code of Ethics," "Purchasing Ethics."

Consideration—Acts, promises, or things of value exchanged by two parties that validates a contract between them.

Construction Work—The process of building, altering or repairing a public structure or building, or other improvements to any public real property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings or real property. A project usually requiring the professional services of an architect or engineer.

Conspicuously—Written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

Consultants and Experts—Those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service. See "Professional Services."

Contingency—A possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminate at the present time.

Contract—A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts. Also, an "Agreement."

Contract Administration—The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. In government, this management may include responsibility delegated by the central purchasing authority to using agencies.

Contract Modifications—A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of a contract accomplished pursuant to contractual conditions and leaving the general purpose and effect of the contract intact. See "Change Order."

Contract Record—A record providing particulars regarding the orders or releases placed for delivery of goods against a contract so the volume of contract purchases can be determined.

Contractual Services—Services furnished under a contract in which the nature and basis for charges and other pertinent contractual terms and conditions are defined. See "Services," "Client Services," "Professional Services," "Proprietory Services."

Convenience Termination Clause—A contract clause which permits the government to terminate, at its own discretion, the performance of work in whole or in part, and to make settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

Cooperative Purchasing—The combining of requirements of two or more political entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits.

Corrupt Combination, Collusion, or Conspiracy in Restraint of Trade—Terms referring to an agreement between two or more businesses to stifle, control, or otherwise inhibit free competition in violation of state and/or federal antitrust laws or regulations. See "Collusive Bidding," "Price Fixing."

Cost-Reimbursement Contract—A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the purchasing law, plus a fee, if any.

Damages—Compensation, usually in money, for injury to goods, persons, or property.

Data—Recorded information, regardless of form or characteristic.

Debarment—A shutting out or exclusion for cause, as a bidder from a list of qualified prospective bidders.

Debt—Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the word may include obligations other than to pay money, such as the duty to render services or deliver goods.

Default—Failure by a party to a contract to comply with contractual requirements; contractor failure to perform.

Defect—A noncomformance of an item with specified requirements.

Delivery Schedule—The required or agreed time, or rate, of delivery of goods or services.

Delivery Terms—Conditions in a contract relating to freight charges, place of delivery, time of delivery, or method of transportation.

Descriptive Literature—Information, such as illustrations, charts, drawings, and technical data which shows the characteristics or construction of a particular product or explains its operations, furnished by a bidder as part of his bid to describe the item he offers. The term refers only to information required to evaluate a product, and need not include other information such as that related to the qualifications of a bidder or operating or maintaining equipment.

Design Specification—A type or manner of writing a purchase description characterized by detail as to how the product is to be manufactured or work is to be performed; generic specification. Appropriate for a unique product or custom work.

Designation of Special Purpose—A term referring to special use for which no items of the kind needed are regularly produced (e.g., sewing machines for teaching blind people to sew), and purchase is accomplished through an Invitation for Bids using a broad specification for a standard market item with a description of the special purpose for which the item will be used together with a questionnaire asking what modifications bidders will make to their standard product to meet the particular need.

Designee—A duly authorized representative of a person holding a superior position. See "Purchasing Agent."

Direct or Indirect Participation—Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity. See "Code of Ethics," "Purchasing Ethics."

Disadvantaged Business—A small business owned or controlled by a majority of persons, not limited to members of minority groups, who have lacked opportunity to develop and maintain a competitve position in the economy because of social disadvantages.

Discount—An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive. See "Cash Discount," "Quantity Discount," "Standard Package Discount," "Trade Discount."

Discount Schedule—A list of discounts applying to varying quantities of goods, or applicable to differing classifications of purchasers.

Disposition—Transferring, trading-in, selling, or destroying goods that are excess, suprlus or scrap.

Economic Order Quantity (EOQ)—The stock level re-order point based on costs of acquisition, storage, handling, and inventory investment to determine the most cost effective time and quantity to reorder. See "Stock Control," "Reordering Level."

Emergency Purchase—A purchase made without following the normal purchasing procedures in order to obtain goods or services quickly to meet an urgent and unexpected requirement.

Employee—An individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

Equal, Or Equal—A phrase used to indicate the acceptability of products of similiar or superior function, purpose, design, and/or performance. See "Brand Name or Equal Specification."

Equal Employment Opportunity Program—A plan to include minority groups or other disadvantaged persons in the work force of businesses affected by the plan.

Equipment—Personal property of a durable nature which retains its identity throughout its useful life. See "Uniform Commercial Code."

Escalation Clause—See "Price Adjustment Provision."

Established Catalogue Price—The price included in a catalogue, price list, price schedule or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public, for the supplies or services involved.

Ethics—See "Code of Ethics," "Purchasing Ethics."

Evaluation of Bid—The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

Excess Property—Inventory not required by the owning agency, but of potential utility to one or more agencies of the jurisdiction or to others eligible to receive it by transfer.

Exhaustion of Administrative Remedies—A legal doctrine to the effect that where an administrative remedy is provided by statute or governing rule or regulation, relief must be first sought from the administrative body, and all attempts to obtain such administrative relief must be expended before the complaining party may look to the courts for relief.

Expedite—Effort to assure delivery of goods purchased in accordance with a time schedule, or to accelerate delivery, usually by contact of the purchaser with the vendor.

Expendable Supplies—Tangible supplies other than those treated as nonexpendable.

Express Warranty—Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.

Extend, Option To—A provision, or exercise of a provision, of a contract which allows a continuance of the contract for an additional time according to permissible contractual conditions. See "Option to Renew."

Fair Market Value—A price that would induce a willing purchaser to purchase or a willing seller to sell in an open market transaction; the price a property would bring at a fair sale between parties dealing on equal terms.

Fidelity Bond—A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of the employee.

Field Purchase Order—A specific purchase document or order issued to a vendor in accordance with authority to make the purchase as delegated to using agencies by a central purchasing office.

Financial Interest—

(a) ownership of any interest or involvements in any relationship from which, or as a result of which, a person within the past (year) has received, or is presently or in the future entitled to receive, more than ($_____) per year, or its equivalent;

(b) ownership of such interest in any property or any business as may be specified by a (Ethics Commission); or

(c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

Firm Bid—A bid that binds the bidder until a stipulated time of expiration.

Fiscal Year—A period of 12 consecutive months selected as a basis for annual financial reporting, planning, or budgeting.

Fixed Price Contract—A contract which provides for a firm price, subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

Fixed Price Sale—An offering at a price established by the seller and not subject to negotiation.

Forfeiture of Deposit or Bond—A loss by omission, negligence, or misconduct for the performing of or the failure to perform a particular act, (e.g., not accepting a contract when an award is made); breach of contract. See "Bid Bond,"

"Bid Deposit," "Fidelity Bond,' "Performance Bond."

Formal Advertising—The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on a specific purchase it intends to make. See "Legal Notice." Note: "Formal Advertising" as used by the federal government has the specific and narrow meaning of source selection made in terms of a detailed, design type specification and award to the lowest initial price bidder.

Formal Bid of Offer—A bid which must be submitted in a sealed envelope and in conformance with a prescribed format, to be opened at a specified time. See "Sealed Bid."

Forward Purchasing—The purchasing of quantities exceeding immediate needs, e.g., in anticipation of a price increase or future shortage.

Forward Supply Contract—A contract for future supply of definite quantities of materials or services over a fixed period. Quantity specified may be obtained by "draw-off orders," or be delivered at a fixed and predetermined rate set out in the contract.

Fraud—A positive act resulting from a willful intent to deceive another with the purpose of depriving him of his rights or property.

Full Cost Recovery Funding—See "Industrial Funding."

General Provisions—Governing clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions. See "Boiler Plate."

Generic Name—Related to or characteristic of whole group or class; not protected by trademark registration.

Generic Specification—See "Design Specification."

Goods—Anything purchased other than services or real property. See "Uniform Commercial Code."

Governmental Body—Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive, legislative, or judicial branch of a government jurisdiction.

Grant—The furnishing by a grantor of assistance, whether financial or otherwise, to a person or unit of government to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

Gratuity—A payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. See "Code of Ethics," "Procurement Ethics."

Gratuitous Offer—An uninvited condition or provision submitted by a bidder or offeror; an unnecessary or unwarranted submission.

Gross Negligence—The degree of lack of care that shows a reckless disregard for life or safety, or that indicates a conscious indifference to the rights of others.

Guarantee—To warrant, stand behind, or insure performance or quality, as a supplier in relation to his product; a warranty.

Identical Bid—A bid that is the same in all salient respects with another bid.

Immediate Family—A spouse, children, parents, brothers and sisters, (and such other relatives as may be designated by a law, Ethics Commission or authorized administrative body). See "Code of Ethics," "Procurement Ethics."

Imprest Funds—Funds set aside as a cash reserve for expenditures made in accordance with established policies and controls; petty cash.

Improper Influence—Effect of actions of one person over the actions of another so as to prevent the proper exercise of the latter's duties.

Industrial Funding—Full financing of program activities out of sale of goods or services furnished; full cost recovery funding.

Ineligible Bidder—A supplier or prospective supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other deficiency, does meet the qualifications for placement on the bidders list or for award; also non-responsible bidder.

Informal Bid—An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.

Initial Price—Outlay of money necessary to buy something. Initial price is a proper determinant for award only when the products or services offered, and to be furnished, are essentially identical irrespective of which bidder or offeror receives the award.

Inspection—Critical examination and/or testing of items to determine whether they have been received in the proper quantity and condition and conform to the applicable specifications.

Inspection Report—A report to inform the purchasing authority of the quality or condition of the items delivered.

In-State Preference—See "Preference."

Invitation for Bids (IFB)—All documents, whether attached or incorporated by reference, utilized in soliciting a bid.

Item—A product, material, or service.

Labor Surplus Area—A geographical section of concentrated unemployment or underemployment, designated by the U.S. Department of Labor.

Late Bid or Proposal—A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.

Latent Defect—A defect not apparent by ordinary and reasonable inspection at time of receipt or beginning use of a product.

Lead Time—The period of time from date of ordering to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; period of time needed by central purchasing to process agency purchase requisitions for bidding and award of a contract.

Lease—A contract conveying from one person (lessor) to another (lessee) use of real estate or personal property for a designated period of time in return for rental payment or other compensation.

Lease-Purchase Agreement—A lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchase option; a conditional sales contract.

Legal Notice—Notice of a proposed purchase as required by law. Depending upon the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders from the bidders list, formal advertisement in a newspaper or newspapers, or a combination of these methods. See "Formal Advertising."

License—A non-transferable permission granted by a government or other authority to perform an act or to engage in an enterprise that is restricted or regulated by law.

Life-Cycle Costing (L.C.C.)—A procurement technique which takes into account operating, maintenance, and money costs, other costs of ownership and usage, and resale or residual value in addition to acquisition price in determining the award of contracts on the basis of lowest total cost over the period the item will be used.

Line Item—A procurement item specified in an Invitation for Bids for which the bidder is asked to tender an individual price and which, under the terms of the invitation, is usually susceptible to a separate contract award.

Liquidated Damages—An amount of money, designated in a solicitation and as part of a contract, to be calculated on a per

diem or other basis and paid upon default of a contract.

List Price—The published price at which a seller offers an item for sale.

Local Preference—See "Preference."

Local Purchase—A purchase made directly by an agency, apart from the central purchasing office, for its own use or for the use of another agency logistically supported by it.

Lowest and Best Bid—See "Lowest Responsible Bidder."

Lowest Responsible Bidder—Originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under modern purchasing concepts, often construed as generally the same as the "lowest responsive and responsible bidder," or the bidder who submits the "lowest and best bid" or the "most advantageous bid, price and other factors considered." For clarity and accuracy, the recommended provision for determining award is the "responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation." See also "Responsive Bidder" and "Responsible Bidder."

Lump Sum—A single price as requested or offered on a solicitation for a group of items, without or in addition to individual item prices; a lot price.

Manual—See "Purchasing Manual."

Manufacturer—One who (1) controls the design and production of an item, or (2) produces an item from crude or fabricated materials, or (3) assembles materials or components, with or without modification, into more complex items.

Market (Noun)—The aggregate of forces that determine the availability prices, and amount of trade in the exchange of goods.

Market (Verb)—To carry out all activities intended to sell a product or service. Includes advertising, packaging, surveying the potential market, etc.

Material(s)—Items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture.

May—Denotes the permissive.

Merit System—A system of selecting and promoting civil servants on the basis of competitive examination or other comparable objective evaluation of their abilities rather than by political appointment.

Misrepresentation—A manifestation by words or other conduct that, under the circumstances, amounts to an assertion not in accordance with the facts.

Mistake in Bid—A miscalculation in composing a bid resulting in an incorrect price or other term, especially in affecting the bidder's eligibility to be awarded a contract.

Mock-Up—A model, usually full size and constructed of inexpensive material, made for the purpose of studying the construction and use of an article or mechanical device. See "Pilot Model," "Prototype."

Modification—Any formal revision of the terms of a contract.

Monopoly—(1) An exclusive right or power to carry on a particular activity; (2) Ownership or control of the supply of or market for a product or service sufficient to allow stifling competition, controlling prices, or otherwise restricting trade.

Most-Favored-Customer Clause—A condition in a bid solicitation and/or contract to the effect that the contractor shall not offer to others prices lower than those provided in the contract, or if lower prices are offered they must also apply to the subject contract. The use of a "most favored customer" clause impedes competition.

Multiple Award—The award of contracts to two or more bidders for the same or essentially similar items. Appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

Multi-Step Bidding—Source selection usually involving two competitive steps, the first constituting a technical proposal for furnishing the product or service described in the solicitation, and the second a submission of prices. Combining elements of competitive sealed bidding and competitive negotiation, multistep bidding can be effective for complex procurements.

Mutual Assent—The state where the parties to a contract agree to all the terms and conditions in the same sense and with the same meaning.

Negligence—The failure to do that which an ordinary, reasonable, prudent person would do, or the doing of some act which an ordinary, prudent person would not do. Reference must always be made to the situation, the circumstances, and the knowledge of the parties.

Negotiated Award—See "Competitive Negotiation."

Negotiated Sale—An offering without a set price with the purchaser retaining the right to reject any or all tenders.

Net Price—Price after all discounts, rebates, etc., have been computed or allowed.

Net Terms—See "Discount."

No Bid—A response to an Invitation for Bids stating that the respondent does not wish to submit a bid. In addition to serving as the courtesy of a reply, it can operate to prevent removal from the bidders list for failure to show active interest.

Nonexpendable Supplies—All tangible supplies having an original acquisition cost of over ($100) per unit and a probable useful life of more than (one year).

Nonresponsive Bid—A bid that does not conform to the essential requirements of the Invitation for Bids; noncomforming bid; unresponsive bid.

Obsolescent—Becoming obsolete, due usually to technological development.

Obsolete—Out of date; no longer in use or effectively usable.

Obsolete Property—Inventory without utility, due usually to technological development and/ or normal wear-and-tear. Obsolete property may be "scrap" with no value except for its basic material content, or "salvage" with some value because parts can be recovered and reused.

Offer—The act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.

Official Responsibility—Direct administrative or operating authority, whether intermediate or final, either excercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct action in the name of a public or private entity.

Oligopoly—A market situation in which a few companies control or dominate the market for a product or service.

Open-Account Purchase—A purchase made by a buyer who has established credit with the seller. Payment terms are usually stated to require payment of invoice on or before a specific date or dates; also, to require payment of invoice in full, or less a certain percentage for prompt payment. Such terms are agreed upon between buyer and seller prior to or at the time of establishing the account.

Open-End Contract—A contract in which quantity, duration, or both are not specified. See "Price Agreements." "Blanket Orders," "Requirements Contracts," and "Term Contracts" should specify either quantity or duration.

Open-Market Purchase—A purchase made other than under a schedule or term contract, or made by negotiation following rejection of all bids when satisfactory bids cannot be obtained.

Option—The right, acquired for consideration, to buy or sell something at fixed price within a specified time.

Option to Extend—See "Extend, Option To."

Option to Renew—A contract clause that allows a party to elect to reinstitute the contract for an additional term; in public contracting, where competitive bidding is a required exercise of the option must rest solely with the purchaser.

Or Equal—See "Equal, Or Equal."

Order—A request or command issued to a supplier for goods

or services at a specified price or agreed basis for payment. See "Uniform Commercial Code."

Order Form—A form by which a supplier is issued or informed of an order. See "Purchase Order."

Order Level—The level of stock of any item at which an order is initiated for more supplies of that item. See "Economic Order Quantity."

Order Record—A central register of orders issued.

Packing List—A document which itemizes in detail the contents of a particular package or shipment.

Partnership—An agreement under which two or more persons agree to carry on a business, sharing in the profits and losses by an agreed to proportion, but each being liable for losses to the extent of all of his personal assets.

Patent—A grant made by a government to an inventor, which gives the inventor the exclusive right to make, use, license, and sell the invention for a period of time.

Patent Clearance—A letter or other formal communciation stating that the reporting requirements of the patent rights clause contained in a contract have been complied with by the contract.

Penalty Clause—A clause in a contract specifying the sum of money to be paid if the contractor defaults on the terms of the contract, particularly in respect to time.

Performance Bond—A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to contractor inability to complete the contract as agreed. See "Forfeiture of Deposit or Bond."

Performance Record—Record to indicate a supplier's ability to keep delivery promises and reliability, together with consistency of quality and performance of the products and services furnished.

Performance Purchasing—A results-directed approach characterized by writing purchase descriptions or specifications with emphasis on what an item is to do rather than how it is to be made, and by evaluating bids in terms of how well an item serves the intended purpose and the costs involved; developing bid evaluation criteria which result in greater economy and value.

Performance Specification—A specification describing the performance characateristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification.

Perishable Goods—Goods which are subject to spoilage within a relatively short time.

Person—Any business, individual, union, committee, club, other organization, or group of individuals.

Personal Property—Everything that is not real property, is subject to ownership, and has exchangeable value.

Personal Services—Infrequent, technical, or unique functions performed by an independent entrepreneur. Personal services contracts almost always run to individuals rather than partnerships, firms or corporations, and the services performed frequently are not the full-time occupation of the contractor. Examples of personal services contracts include translation, technical editing, technical appraisal.

Petty Cash—See "Imprest Funds."

Pilot Model—A model, perhaps handmade, used in production planning or to submit for approval of the purchaser as representative of the product that will be supplied against a contract. See "Prototype."

Political Subdivision—A subdivision of a State which has been delegated certain functions of local government, and which can include counties, cities, towns, village hamlets, boroughs, and parishes.

Preference—An advantage in consideration for award of a contract granted to a bidder by reason of the bidder's residence, business location, origin of product offered, business classification (e.g., small business), or other reason; generally inconsistent with impartiality in awarding public contracts.

Prepaid—A term denoting that transportaiton charges have been or are to be paid at the point of shipment.

Prequalification of Bidders—The screening of potential suppliers in which a purchaser considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent invitations to bid. See "Bidders List," "Qualified Bidder."

Price Adjustment Provision—A condition in a solicitation and resultant contract that allows the price under the contract to decrease or increase under defined conditions; the condition should provide for the purchaser to cancel any individual item affected, or the contract, if a request for increase is not acceptable.

Price—The amount of money that will purchase a definite quantity, weight, or other measure of a commodity or service.

Price Agreement—An agreement in which a purchaser negotiates with a vendor to furnish items at a predetermined price. Usually it is an informal arrangement involving a minimum number of units, orders place directly with the vendor by the purchaser, and a limited duration of time.

Price at Time of Delivery—A term used in sales contracts when a seller will not give a firm price or agree to an escalator clause, but will only agree to invoice at the price charged to like customers on the day the goods in question are shipped or delivered.

Price Competition— The basis for awarding a contract solely on the consideration of price as submitted on competitive bids or as negotiated under competitive proposals.

Price Control—The fixing or restricting of prices, especially by a governmental agency.

Price Escalation Clause—See "Escalation Clause."

Price Fixing—Agreements between competitors to sell at the same price, to adopt formulas for the computation of selling prices, to maintain specified discounts, to maintain predetermined price differentials between different quantities, types, or sizes of products, or other means of setting prices charged to purchasers. See "Collusive Bidding," "Corrupt Combination," "Collusion," or "Conspiracy in Restraint of Trade."

Price List—See "Price Schedule."

Price Maintenance—The establishment by a manufacturer or secondary seller of a price for an item below which he will not sell or permit the product to be sold.

Price Protection—An understanding or agreement between a purchaser and seller, or extended by a seller to a purchaser, to maintain a price against increase, or to grant the purchaser any reduction in price the vendor may establish on the goods in question, prior to shipment of the purchaser's order.

Price Rebate—A refund or allowance on price, given usually after the completion of a contract and frequently based on some relationship with the business volume.

Price Schedule—A list of prices applying to varying quantities or kinds of goods.

Principal—One who employs an agent; a person who has authorized another to act on his account and subject to his control. See "Agent," "Purchasing Agent."

Priority—A degree of precedence given to a requisition, order, or contract to obtain completion, delivery, or performance on a particular date at the expense, if necessary, of competing demands upon the same supplier or production facility.

Procurement—The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards, and administering contracts are involved; in some contexts property management is implied. See "Purchas-

ing Cycle."

Professional Behavior—See "Code of Ethics," "Purchasing Ethics."

Professional Service—Infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services. While not limited to licentiates, the services are considered "professional," and the contract may run to partnerships, firms, or corporations as well as individuals. Examples of professional services include medicine and the medical arts, architectural and engineering services, management and systems consultation, research, and the performing arts.

Program—A plan of action to accomplish a defined objective of an organization's responsibility.

Proprietary Article—An item made and marketed by a person or persons having exclusive right to manufacture or sell it.

Proprietary Information—Information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market. See "Trade Secret."

Proprietary Services—Work by independent contractors where the process is more important than the product, if any. Proprietary service contracts usually run to partnerships, firms, or corporations rather than individuals and are usually awarded through competition. Examples of proprietary service contracts include janitorial and custodial, protection and security, maintenance and repair, data processing service bureau.

Proposal—An offer made by one party to another as a basis for negotiations for entering into a contract. See "Competitive Negotiation."

Proposal Evaluation Criteria—Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

Proposer—A person submitting a proposal in response to a Request for Proposals (RFP).

Protest—A complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

Prototype—A model suitable for evaluation as to design, construction, workmanship, performance, and compliance with specifications. See "Pilot Model."

Public Bid Opening—The process of opening and reading bids, conducted at the time and place specified in the Invitation for Bids and/or the advertisement, and in the presence of anyone who wishes to attend. See "Bid Opening."

Public Policy—That which is deemed by administrators to represent the public interest, or by courts to be general and well-settled public opinion relating to the duties of men and government.

Public Record—Information about government activities that is available for public inspection.

Purchase Description—The words used in a solicitation to describe the supplies, services, or construction to be purchased, including any performance, physical, or technical requirements. Unless the context requires otherwise, the terms "purchase description," "purchase specification," and "specification" may be used interchangeably.

Purchase Order—A purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services ordered; applicable terms as to payment, discounts, date of performance and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Purchase Request—Information transmitted by a using agency requesting the central purchasing office to effect a contract for a particular need or group of needs. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure. See "Requisition," "Request for Purchasing Authority."

Purchasing Agent—An administrator whose job includes reviewing appropriateness of purchase requests, preparing solicitations, obtaining quotations, bids or proposals for pruchases, and evaluating responses of bidders and offerors for award of contracts; buyer. See "Agent."

Purchasing Cycle—The full cycle of activities carried out by a purchasing department in the acquisition of goods and services. See "Procurement."

Purchasing Ethics—Moral concepts and practices based on the principle that the public interest is paramount, applicable to the personnel of the purchasing department and all other persons involved in the purchasing process, particularly with respect to the expenditure of government funds and relationships between public employees and sellers. See "Code of Ethics."

Purchasing Manuals—A formal collection of information and instructions relative to practices and procedures of the procurement authority and using agencies.

Purchasing Manager—The head of a purchasing activity or senior purchasing agent in the central purchasing office with authority to sign contracts on behalf of the jurisdiction. See "Agent," "Principal," "Purchasing Agent."

Purchasing Official—An administrative officer who directly oversees the activities of purchasing agents and other aspects of property management that are joined as separate or subordinate sections under individual administrative control.

Purchasing, Public—The process of obtaining goods and services for public purposes in accordance with law and procedures intended to provide for the economical expenditure of public funds.

Qualified Bidder—A bidder determined by the government to meet standards of business competence, reputation, financial ability, and product quality for placement on a list of prospective bidders. See "Bidders List," "Prequalification of Bidders."

Qualified Products List—A specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on Approved Brands List.

Quality Assurance—A planned and systematic series of actions designed to provide adequate confidence that a product purchased or to be purchased will perform satisfactorily in service.

Quality Control—Practices and procedures necessary to ensure appropriate quality and performance of goods produced or received.

Quantity Discount—An allowance determined by the quantity or value of a purchase. See "Discount."

Quotation—A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding; the stating of the current price of a commodity, or the price so stated.

Receiving Report—A form used by a receiving unit to inform others, such as the purchasing and accounting departments, of the receipt of goods purchased.

Regulation—A statement by a governmental body, having general or particular applicability and future effect, designed to implement statute law and prescribe policy, or to describe organization, procedure, or practice, often promulgated in accordance with an Administrative Procedure Act. See "Rule."

Renegotiation—Deliberation, discussion, or conference to change or amend the terms of an existing agreement.

Renew, Option To—See "Option to Renew."

Reordering Level—The stock level at which a requisition for the replenishment of the stock should be intitiated. See "Economic Order Quantity (EOQ)."

Repudiation of Contract—A positive and unequivocal refusal to perform a contract.

Request for Proposals (RFP)—All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids.

Request for Purchasing Authority (RPA)—An internal document by which a using agency requests central purchasing to delegate a procurement to the using agency. See "Purchasing Request," "Requisition."

Requirements Contract—An indefinite quantity contract in which a purchaser is obligated to order and a contractor is obligated to supply all of the purchaser's normal requirements that arise for an item or items within the specified period of the contract. See "Blanket Order," "Term Contracting."

Requisition—An internal document by which a using agency requests the purchasing department to intitiate a procurement. May also be a form used for obtaining supplies from a storeroom or warehouse. See "Purchase Request."

Research and Development (R&D)—A process by which new products or new product forms are created; precedes production.

Responsible Bidder or Offeror—A person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder—A person whose bid conforms in all material respects to and terms set out by the government in the Invitation for Bids.

Restraint of Trade—The effect of an act, contract, combination or conspiracy which eliminates or stifles competition, effects a monopoly, artificially maintains prices, or otherwise hampers or obstructs the course of trade and commerce as it would be carried on if left to the flow of natural and economic forces.

Restrictive Specification—A specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

Rule—A regulation, standard, statement of policy or order of general application having the effect of law, issued by a government agency to implement, interpret or make statute law specific. See "Administrative Law," "Regulation."

Rules and Regulations—Governing precepts and procedures made by an administrative body or agency under legislative authority that usually have the force and effect of law.

Salvage—Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused.

Sample—See "Bid Sample."

Schedule Purchase—A purchase for which a bid opening date is prescheduled such as quarterly, so that using agencies' requirements for the period covered by the ensuing contract can be consolidated for volume purchasing under one Invitation for Bids.

Scrap—Property that has no value except for its basic material content.

Sealed Bid—A bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major procurements, to enhance fair competition.

Seasonal—Depending upon the seasons, either climatic or economic, and usually cyclical on an annual basis.

Seasonal Rate—Price or price basis applicable to some articles or commodities and effective only during certain periods of the year.

Seller's Market—A market condition where demand is greater than supply, sellers have greater control over prices and terms of sale, and prices tend to be high or rising.

Service—Work performed to meet a demand, especially work that is not connected with a manufacturing process.

Service Contract—A contract that calls for a contractor's time and effort rather than for a concrete end product. The term as defined here does not include employment agreements or collective bargaining agreements.

Services—See "Client Services," "Personal Services," "Professional Services," and "Proprietary Services."

Shall—Denotes the imperative.

Shipping List—A memorandum listing all items included in one shipment or shipped at one time.

Single-Source Procurement—See "Sole-Source Procurement."

Small Business—A designation referring to a firm, corporation, or establishment that has a small number of employees, low volume of sales, small amount of assets, or limited impact on the market, and is independent, i.e., is not an affiliate or subsidiary of a business dominant in its field of operations.

Sole-Source Procurement—An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

Solicitation—The process of notifying prospective bidders or offerors that the jurisdiction wishes to receive bids for furnishing goods or services. The process may consist of public advertising, mailing Invitations for Bids, posting notices, telephone or telegraph messages to prospective bidders, or all of these.

Sovereign Immunity—The principle which absolves the sovereign (state, city, county) from responding in damages for past injuries to another party.

Specification—A description of what the purchaser seeks to buy and, consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. A purchase description.

Specifications Committee—A committee which advises and assists the central purchasing authority in establishing specifications. Often such a committee includes representatives with expertise from using agencies and specializes in a particular product area. A committee may also contribute advice and assistance in the development of standards.

Spot Purchase—A one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

Standard—A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designated purpose.

Standard Commercial Supplies—Articles which in the normal course of business are maintained in stock by a manufacturer or dealer, distributor, or other commercial outlet for the marketing of such articles.

Standard Package Discount—A price allowance applied to goods supplied in the vendor's regular quantity packaging. See "Discount."

Standard Specification—A specification established through a

prescribed process and used for all or most purchases of the item involved.

Standardization (of Specifications)—The process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose.

Standards Committee—A committee usually composed of policy level officials whose purpose is to advise and assist the central purchasing authority in establishing product and use standards and, in some cases, standard specifications.

Stock—A supply of goods maintained on hand in a supply system to meet anticipated demands.

Stock Control—Control of the level of stock by control over the movement of goods into and out of stores. See "Economic Order Quantity (EOQ)."

Stock Record—A record kept of items or materials in stock, usually located at a central point and showing stock level position.

Storage—The holding of goods in a designated place for safekeeping; a space or a place for the safekeeping of goods.

Supplemental Agreement—A contract addendum acomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement and otherwise where competition is not required.

Supplier—An actual or potential contractor; a vendor.

Supplies—Customarily, items that are consumed or expended in the course of being used, as distinguished from equipment and materials; but in some purchasing terminology all items except construction and services.

Support Services—See "Proprietary Services."

Surplus Property—Inventory not needed by the owning agency or by other agencies at the present time or in the foreseeable future.

Tabulation of Bids—A recording of bidders and abstract of their bids listing items offered, prices, deliveries, etc. in response to a specific solitictation, made for purposes of comparison and recordkeeping; an abstract.

Term Contracting—A technique by which a source of supply is established for a specific period of time. Term contracts characteristically are established through competitive sealed bidding and usually are based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period. See "Blanket Order," "Open-end Contract," "Price Agreement," "Requirements Contract."

Terms and Conditions—A general reference applied to the provisions under which bids must be submitted and which are applicable to most purchase contracts. See "Boiler Plate."

Terms of Payment—Purchase transactions require payment for the goods or services received, and with exception of an unusual exchange or barter agreement there are three basic payment terms: cash, open account, and secured account.

Testing—Determination of the physical, chemical or preformance characteristics of items. Testing may be conducted in connection with developing specifications and standards, making comparative evaluations of products offered on bids, and ascertaining compliance with specifications before or after a contract award.

Title—The means whereby a person's ownership of property is established.

Token Bid—A perfunctory offer by a bidder with no serious intent of being the successful bidder; usually submitted to maintain eligibility for the bidders list or as an act of collusion.

Total Supply—A concept of purchasing with the objective of advanced planning which provides for the broadest scope of purchasing and purchasing-related activities to reduce costs, improve effectiveness, and increase operational efficiency. Total supply is concerned not only with acquisition, but with requirements planning, logistics, and property management.

Trade Discount—A deduction from an established price for items or services that is offered or allowed by the seller and not conditioned upon prompt payment. See "Discount."

Trade Name—See "Brand Name."

Trade Secret—Any aspect of a business or its operation not made available to competitors. See "Proprietary Information."

Trademark—A distinguishing sign, symbol, mark, word, or arrangement of words in the form of a label or other indication, that is adopted and used by a manufacturer or distributor to designate his particular goods, and which no other person has the legal right to use.

Ultra Vires Action—An action beyond the power or purpose of a corporation or government agency, but not an action which is merely performed in an unauthorized manner or without authority.

Uniform Commercial Code—Uniform statute law adopted by states for consistency and modernity in law governing commercial transactions.

Unit Price—The price for a given unit of a good or service, e.g., price per ton, labor hour, foot.

Unit Price Extension—The calculation of the total price of an item by mutliplying the price per unit by the number of units requested or purchased.

Unresponsive Bid—See "Nonresponsive Bid."

Unsuccessful Bidder or Offeror—One whose bid or proposal is not accepted and award is made to another.

Using Agency—A unit of government that requisitions items through central purchasing.

Value—Intrinsic worth; the amount of money for which goods or services can be exchanged. See "Uniform Commercial Code."

Value Analysis—An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.

Vendor—A supplier.

Vendor Failure—See "Default."

Vendor File—The accumulated record maintained by the central purchasing authority of information relevant to a bidder's or contractor's business relationship with the jurisdiction, including application for inclusion on the bidders list, record of performance under contracts, pertinent correspondence, and the results of any inquiries or analyses made for specific purposes.

Void—Without legal effect, unenforceable.

Volume Purchasing—See "Bulk Purchasing."

Voluntary Consensus Standards—Standards, especially for procurement purposes, developed through voluntary participation of interested parties including producers, users and consumers, and representatives variously from government and education. Development and use of such standards is voluntary.

Waiver of Bid(s)—A process authorized by law or rule whereby a government purchasing office may procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement; also "Waiver of Competition."

Waiver of Mistake or Informality—The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.

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